ENVIRONMENTAL PROTECTION AND OTHER LEGISLATION AMENDMENT BILL 2000

EXPLANATORY NOTES

GENERAL OUTLINE

Short Title

The short title of the Bill is the *Environmental Protection And Other Legislation Amendment Bill 2000.*

Policy Objectives of the Legislation

The policy objectives of the Bill are to:

(a) transfer the environmental regulation of the mining industry from the Department of Mines and Energy (DME) to the Queensland Environmental Protection Agency (EPA);

(b) implement the *National Environment Protection Measure for the Movement of Controlled Waste Between States and Territories* ("the Measure") by providing for the recognition of interstate waste transport licences and for the management of contaminated soil from other jurisdictions;

(c) improve administrative processes under the *Environmental Protection Act 1994* to simplify and clarify requirements under the Act;

(d) amend the *Nature Conservation Act 1992* to allow the EIS process which this Bill inserts in the *Environmental Protection Act* 1994 (principally for mining projects) to be used for decisions under the *Nature Conservation Act 1992*; and

(e) extend the continuation of certain by-laws and provisions of the repealed *Harbours Act 1955* under the *Transport Infrastructure Act 1994* requiring approval for particular matters until 31 December 2002.

Reasons for the Bill

The Bill incorporates the legislative changes necessary to implement the government decision to transfer the environmental regulation of mining from DME to the EPA. The amendments primarily amend the *Environmental Protection Act 1994* and the *Mineral Resources Act 1989*. The Bill enables DME to continue to administer mining tenures under the *Mineral Resources Act 1989* and provides for environmental regulation of mining activities by the EPA under the *Environmental Protection Act 1994.* The Bill also includes minor consequential amendments to the *Integrated Planning Act 1997* and the *Nature Conservation Act 1992.*

The Bill includes amendments to the *Environmental Protection Act 1994* to implement the Measure. Under the Measure, States and Territories were required to reach agreement on the implementation of mutual recognition within six months of the Measure being made. On 11 August 1998, jurisdictional environment agencies signed the *Agreement between Agencies on matters relating to the implementation of the National Environment Protection Measure for the Movement of Controlled Wastes between States and Territories.* Implementation of the Measure is a State or Territory responsibility.

The operational and administrative amendments to the *Environmental Protection Act 1994* will improve the consistency and clarity of the Act. The amendments are necessary for the efficient administration of the Act and do not involve a change in policy by the EPA.

The *Transport Infrastructure Act 1994* is amended to continue the extension for certain by-laws under the *Harbours Act 1955* (including approvals for dredging, works on tidal lands and reclamations) until 31 December 2002.

Achieving the Objective

The Bill implements the Government's decisions for the environmental regulation of mining by providing for:

- an effective regulatory system with set timeframes and an integrated approval process;
- a process in the *Environmental Protection Act 1994* for preparing Environmental Impact Statements for major mining projects;

- new codes of environmental compliance to provide a simple streamlined system to regulate low risk mining projects; and
- public input into the environmental conditioning for mining projects through a public notification and objection process.

The Bill implements the Measure by providing for:

- interstate controlled waste transporters' environmental licences to be recognised in Queensland; and
- the management of contaminated soil sourced from outside Queensland

The operational amendments clarify the operation of existing provisions for environmental authorities, relocate definitions from the *Environmental Protection Regulation 1998* into the *Environmental Protection Act 1994* and amalgamate similar provisions under the Act to reduce unnecessary duplication.

An amendment to the *Nature Conservation Act 1992* will allow certain decisions under that Act to be assessed using the new EIS process which this Bill inserts in the *Environmental Protection Act* 1994.

The Bill amends the *Transport Infrastructure Act 1994* to extend the continuation of certain by-laws and certain provisions of the *Harbours Act 1955* requiring approval for certain matters until 31 December 2002.

Alternatives to the Bill

In 1994, the Government began preparing an environmental protection policy for the mining and petroleum industries. During the process of policy development and stakeholder consultation, it became apparent that the scope of the proposed reforms was beyond what could be dealt with through subordinate legislation. Consequently, the Government in May 1999 authorised the development of a Bill to transfer the environmental regulatory provisions from the *Mineral Resources Act 1989* to the *Environmental Protection Act 1994*.

Administrative cost and savings to Government

Resources for environmental regulation of mining have been transferred from DME to EPA without any net change in cost to government. There are no new or increased fees or charges for industry as a result of the transfer. Codified conditions for low impact projects, tight mandatory timeframes and new opportunities for project environmental authorities will provide savings for industry.

There will be no additional costs to the Queensland Government in tracking interstate waste movements as the small number, estimated to be 350 per year, will be tracked using existing resources. Waste transporters may face increased compliance costs if they need to upgrade inferior vehicles to acceptable standards. Minor administrative costs will be borne by the operators who will record waste movements and details. Facility operators will also have increased compliance costs as a result of notification requirements for receiving waste.

There are no financial implications as a result of the minor administrative amendments included in this Bill.

Consistency with Fundamental Legislative Principles

Some of the mining amendments in the Bill may be inconsistent with fundamental legislative principles. Attachment A provides details of the relevant sections, an outline of the potential inconsistency and the justification for the proposed provision.

The operational and consequential amendments and amendments to the *Transport Infrastructure Act 1994* are consistent with fundamental legislative principles.

Consultation

There has been extensive consultation regarding the environmental regulation of the mining industry in Queensland since 1994. A draft Bill was distributed to key stakeholder groups including other government agencies, the Queensland Mining Council, the North Queensland Miners Association, the Queensland Conservation Council and the Queensland Environmental Law Association in March 2000, and the Bill was reviewed in light of comments received.

A national consultation process was undertaken for the Measure, which proved to have wide support in both government and non-government sectors.

No public consultation was undertaken for the operational amendments due to the restricted impact of these amendments on administering authorities, business and the community.

The amendments to the *Transport Infrastructure Act 1994* will have the effect of continuing existing provisions in force. The amendments do not represent a change in government policy and will have no effect on the public, consequently consultation was not considered necessary.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Short title

Clause 1 states that the short title of the Act is the *Environmental Protection and Other Legislation Amendment Act 2000.*

Commencement

Clause 2 provides for the Act to commence on a day to be fixed by proclamation with the exception of the following provisions, which commence on assent:

- section 46, to the extent it inserts section 219AA of the *Environmental Protection Act 1994*;
- sections 47, 56 and 146; and
- section 167, to the extent it inserts part 19, division 3, heading and section 736 of the *Mineral Resources Act 1989.*

PART 2—AMENDMENT OF ENVIRONMENTAL PROTECTION ACT 1994

Act amended in pt 2 and schedule

Clause 3 provides that clauses in Part 2 and in the schedule of the *Environmental Protection and Other Legislation Amendment Act 2000* amend parts of the *Environmental Protection Act 1994.*

4 Insertion of new ch 1, pt 3, div 2, sdiv 3A

Clause 4 inserts a new subdivision which defines environmentally relevant activities. This replaces and updates existing provisions in the *Environmental Protection Act 1994.* Mining has previously been a level 2 environmentally relevant activity, but under the new provisions mining activities can be either a level one or level two ERA, depending on the degree of environmental impact.

The new sections added are as follows:

CHAPTER 1—PART 3

Subdivision 3A—Environmentally relevant activities

Meaning of "environmentally relevant activity"

Section 17A defines an environmentally relevant activity as being a mining activity or another activity prescribed under section 17B.

Environmentally relevant activity may be prescribed

Section 17B states the circumstances where a regulation may prescribe an activity other than a mining activity to be an environmentally relevant activity (see *Environmental Protection Regulation 1998,* schedule 1).

Levels for environmentally relevant activities

Section 17C subsection (1) provides that an environmentally relevant activity other than a mining activity must by prescribed under a regulation to be a level 1 or level 2 environmentally relevant activity (see *Environmental Protection Regulation 1998, schedule 1*).

Subsection (2) provides that a standard mining activity is a level 2 environmentally relevant activity.

Subsection (3) provides that a mining activity, other than a standard mining activity, is a level 1 environmentally relevant activity.

Replacement of s 20 (Effect of Act on other Acts)

Clause 5 updates the effect of the *Environmental Protection Act 1994* on other Acts.

Insertion of new chs 2A–2D

Clause 6 inserts new chapters into the *Environmental Protection Act 1994* (see below).

Chapter 2A *Environmental Impact Statements;*

Chapter 2B *Environmental Authorities and Development Approvals other than for Mining Activities;*

Chapter 2C *Environmental Authorities;* and

Chapter 2D *General Provisions about Environmental Authorities*

New *Chapters 2A, 2B, 2C and 2D*

CHAPTER 2A—ENVIRONMENTAL IMPACT STATEMENTS

PART 1—EIS PROCESS

Division 1—Preliminary

Subdivision 1—Application

When EIS process applies

Section 34 lists the projects for which the Environmental Impact Statement (EIS) process described in this chapter applies. These projects are:

1. where the chief executive or Minister has decided (assessment level decision) that an EIS is needed for an application for a environmental authority for mining; or
2. where an EIS is required for a project under another Act, for example the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*; or
3. where the chief executive has agreed that the proponent may voluntarily conduct an EIS.

However, for other Acts mentioned under 2 above, an EIS under this chapter can only be done if the other Act allows or accredits this process.

This section also allows for a regulation to be made requiring other types of projects (besides mining projects but not including projects for which there is an assessment process provided and the Integrated Development Assessment Scheme) to complete an EIS under this chapter.

Subdivision 2—Definitions for pt 1

Who is an "affected person" for a project

Section 34AA lists the "affected persons" who must be given notice of draft terms of reference or a submitted EIS. The affected persons are those who own or otherwise have a direct interest in the affected land. This list is consistent with the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* and its State accreditation provisions.

Other definitions.

Section 34AB defines certain terms for this chapter. Note that the definition of "environmental management plan" for this chapter is different to the definition in Chapter 2C.

Subdivision 3—Purposes of EIS

Purposes

Section 34AC lists the purposes of an EIS. The purpose of an EIS is to assess the potential adverse and beneficial environmental, economic and social impacts of the project, and management, monitoring, planning and other measures proposed to minimise any adverse environmental impacts of the project. The purpose of the EIS is also to consider feasible alternative ways to carry out the project in order to minimise the impacts. Where the project includes an activity for which an EIS assessment requirement applies, either directly under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999,* or under a bilateral agreement under that Act, meeting such requirements is also a purpose of an EIS.

Division 2—Terms of reference stage †

Subdivision 1—Draft terms of reference

Submission

Section 34AD requires the proponent to submit draft terms of reference (TORs) to the chief executive. The TORs for the EIS must provide for the purposes (previous section) to be achieved.

Section 34AD also requires the draft to be submitted in the approved form and be accompanied by certain information (unless already provided) as follows:

- what the project will be;
- where it will be;
- who are the "affected persons" (see 34AA); and
- who the "interested persons" proposed by the applicant are and how it is proposed to consult them.

There is no prescriptive definition of interested persons or how they should be consulted as this may vary widely with different projects. The final decision as to who are considered to be interested persons for a project will be made by the chief executive. The EPA will provide proponents with guidelines to assist them in proposing who should be regarded as interested persons for a particular project.

The chief executive may consult other Government agencies as necessary and liaise with the proponent on the draft. The aim is to ensure that the published draft terms of reference are relatively comprehensive, reflecting the interests and requirements of all key agencies.

At this stage of the process, the proponent is in the best position to identify the potential impacts of the project and likely issues of importance to the approval agency and the public. The proponent is expected to cover these matters comprehensively in the draft TORs. The chief executive will publish guidelines to assist the proponent in doing so.

Subdivision 2—Public notification of draft terms of reference

Preparation of TOR Notice

Section 34AE provides that the chief executive must, within 15 business days after the draft TORs are submitted, give the proponent a written "TOR notice" for public notification. The notice must describe the project and the operational land, state that a draft TOR for the EIS has been prepared and where the draft may be obtained. The notice must also indicate that anyone may make written comments to the chief executive about the draft within the comment period decided by the chief executive.

Public Notification

Section 34AF requires the chief executive to publish the TOR notice within 5 business days after giving it to the proponent. The chief executive may also ask the proponent to pay any costs incurred by the chief executive in publishing the notice. The proponent must within 5 business days give a copy of the notice to each affected person for the project, each interested person and any other person identified by the chief executive.

Proponent to be given comments

Section 34AG requires the chief executive to give all comments on the draft TORs to the proponent within 10 business days of the end of the comment period.

Advice to chief executive

Section 34AH requires the proponent to give the chief executive a written summary of the comments, the proponent's response to the comments and any proposed amendments to the TORs as a result of the comments. The time allowed for the proponent to provide this may be prescribed by regulation. A guideline will be published to assist proponents in complying with this requirement.

Subdivision 3—Final terms of reference

Finalising terms of reference

Section 34AI requires the chief executive to consider the summary of comments received, the applicant's response and any proposed amendments (see section 34AH) and to prepare a final TOR. The final TOR must be published and a copy given to the proponent. The time allowed for the chief executive to do this may be prescribed by a regulation. If requested by the chief executive, the proponent must pay the reasonable costs incurred by the chief executive in publishing the final terms of reference.

Division 3—Submission stage

When EIS may be submitted

Section 34AJ requires the EIS to be submitted within two years of the final TORs being given, unless the chief executive extends the period. Otherwise, new TORs must be determined by following the process in division 2.

Chief executive may require copies of EIS

Section 34AK allows the chief executive to require the proponent to give the chief executive the stated number of copies of a submitted EIS which the chief executive reasonably requires. A reasonable number may include copies for other agencies or for directly affected parties (eg landholders) who would otherwise have to pay for copies. The chief executive may specify the format in which copies are to be provided. For example, the proponent may wish to provide copies on computer diskette or to post the documents in a downloadable format on a web-site but the chief executive may decide that copies of such documents must also be provided in printed form for people without access to computers.

Decision on whether EIS may proceed

Section 34AL requires the chief executive, within a period prescribed by regulation, to decide whether a submitted EIS addresses the TORs in an acceptable form.

The chief executive may only allow an EIS to proceed to publication if satisfied the EIS addresses the TORs adequately and in an acceptable form. If satisfied, the chief executive may set a period for public submissions on the EIS, which must be at least 20 business days. The chief executive must notify the proponent of the decision within 10 business days of making it. (Refer to Sections 34AN & 34AO for the process to be followed by the proponent following the giving of the notice by the chief executive.)

If the decision is that the EIS may not proceed, the chief executive must give written reasons and explain how the proponent may apply to the Minister for review of the decision.

Ministerial review of refusal to allow to proceed

Section 34AM applies if the chief executive decides to refuse to allow the EIS to proceed under this part. The proponent may apply to the Minister to review the chief executive's decision.

In reviewing the decision, the Minister has the same powers as the chief executive and the Minister may confirm the chief executive's decision or decide to allow the EIS to proceed.

The criteria for the decision are stated in section 34AL. The Minister may allow the EIS to proceed only if the Minister considers it addresses the final terms of reference in an acceptable form. In effect the Minister is the review body for the original decision by the chief executive.

If the Minister decides to confirm the chief executive's decision, the chief executive must, within 10 business days, give the proponent written notice of the decision and the reasons for it. The Minister's decision is not appealable on the merits, however, the *Judicial Review Act 1991* is not to be excluded.

Division 4—Notification stage

Subdivision 1—Public notice requirements

Public notification

Section 34AN requires the proponent, within 20 business days of being notified that the EIS may proceed, to publish a written EIS notice (see section 34AO for the required content of the notice) and give a copy to the affected persons and the interested persons.

The chief executive may also direct the proponent to give the notice to other parties. Such a direction is subject to review and appeal. The proponent may also be required to publish the EIS notice in a newspaper or in another way decided by the chief executive. Note that this section is subject to section 34BF which states that the chief executive may decide that there has been substantial compliance with the requirements of this section.

Required content of EIS notice

Section 34AO describes the required contents of the EIS notice. The notice gives information about the project, where the EIS may be inspected, how to obtain copies or extracts, invites anyone to make submissions in writing on the EIS and specifies a period during which these may be made. A regulation may be made to require additional matters to be included in the notice.

The period during which submissions may be made (the submission period) is the period fixed under section 34AL, but must not end less than 20 business days after the EIS notice is published.

Declaration of compliance

Section 34AP requires the proponent to give the chief executive a statutory declaration that the public notice requirements have been complied with, listing the name and address of the persons given a copy of the EIS notice.

Subdivision 2—Submission

Right to make submission

Section 34AQ provides that any person may make a submission about an EIS, in the allowed period.

Acceptance of submissions

Section 34AR describes what constitutes a properly made submission and requires the chief executive to accept properly made submissions. The chief executive also has the discretion to accept written submissions that are not properly made submissions.

Response to submissions

Section 34AS requires the chief executive to give the proponent a copy of all submissions accepted by the chief executive. The proponent must within the relevant period consider the submissions and give the chief executive a summary of the submissions, a statement of the proponents' response to the submissions and any amendments of the submitted EIS because of the submissions.

Division 5—EIS assessment report

EIS assessment report

Section 34AT requires the chief executive to prepare an EIS assessment report and give a copy to the proponent. The section requires the report to be given within 30 business days of the submission period ending or of an amendment to the EIS being notified by the proponent (see section 34BD). However, the proponent and the chief executive may agree to extend this period.

Criteria for preparing report

Section 34AU requires the chief executive, in preparing the EIS assessment report, to consider the stated matters and allows further matters to be considered to be specified by regulation.

Required content of report

Section 34AV requires the EIS assessment report to address the following:

- how well the EIS has addressed the final TORs (and make any appropriate recommendations to repair deficiencies or supplement the information provided);
- the adequacy of the proposed environmental management plan for the project (and make any appropriate recommendations for improving the plan);
- whether the project is suitable and should be approved; and
- recommend any conditions (not just conditions under the *Environmental Protection Act 1994*, but relevant conditions of any other type) that assessment of the EIS suggests should be applied to the project if it were to proceed.

The EIS assessment report will include all the proposed conditions for the various other government approvals which the proposed project may require. These may include, for example, approvals under the *Transport Infrastructure Act 1994.*

Division 6—Completion of process

When process is completed

Section 34AW states that the EIS process is complete (ie the proponent has fulfilled the EIS requirement) when the EIS assessment report is given to the proponent under Section 34AT.

The section also allows the chief executive to decide that the EIS is complete if:

- an EIS, or a similar statement under another name, has been done under another Act (eg the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* or the *State Development and Public Works Organisation Act 1971*) and
- the process for preparing that EIS provides a substantially equivalent process in respect of obtaining sufficient information and opportunities for public input.

Division 7—Miscellaneous provisions

Subdivision 1—Inquiries by chief executive

Application of sdiv 1

Section 34AX provides that the following three sections apply throughout the EIS process.

Chief executive may seek advice, comment or information

Section 34AY allows the chief executive to seek advice on any aspect or step of the EIS from, or to confer with, the proponent or any other person. This could include other Governments, other agencies, independent experts, community organisations, or any other relevant body or person.

Disclosure of relevant documents or information

Section 34AZ allows the chief executive to give any information or document relating to an EIS to anyone unless it is the subject of a disclosure exemption under Chapter 7 Part 3 (eg for commercially confidential material).

Inquiry does not alter process

Section 34BA provides that nothing the chief executive does under sections 34AY and 34AZ can substitute for any other requirement of the EIS process under this chapter, nor can it alter any of the set time periods.

Subdivision 2—Public inspection

Public access to draft terms of reference or submitted EIS

Section 34BC states that the proponent for a project must, on request, give a copy of the draft terms of reference for an EIS or the submitted EIS to any person. However, the proponent may require payment of the appropriate fee. (Refer to section 214A for further detail on how the appropriate fee is determined.)

Subdivision 3—Amending EIS

Amending EIS

Section 34BD allows the proponent to amend or replace the submitted EIS. For a mining project the amendment can be made at any time until a draft environmental authority is given to the proponent, for other projects, amendments can be made until the EIS assessment report is given to the proponent. (Note however that the EIS process will initially apply only to mining projects.) However, no EIS may be amended during the period that public submissions are allowed (to avoid the submissions being made on aspects that have already been changed).

The proponent must notify the chief executive of the amendment in writing. A regulation may be made requiring notice of an amendment to be accompanied by a fee.

Subdivision 4—Effects of noncompliance with process

Process is suspended

Section 34BE states that if the proponent does not comply with any requirement, or take any required step in preparing the EIS, the process is suspended. If the suspension lasts one year, the process lapses altogether and must begin again. The one year period may be extended by agreement between the chief executive and the proponent.

However, the proponent has up to two years to prepare and submit the EIS (section 34AJ). The process is not suspended if, under section 34BF, the chief executive fixes a new period for compliance with public notification requirements.

Substantial compliance with notice requirements may be accepted

Section 34BF allows the chief executive discretion to allow the EIS to proceed if the proponent does not fully comply with public notice requirements, provided the chief executive is satisfied there has been substantial compliance with the requirements (ie there has been an adequate opportunity for affected parties, interested parties and the public to provide input). Alternatively, the chief executive may fix a new period for public comments or submissions, and require the proponent to comply with the relevant public notification requirements.

PART 2—VOLUNTARY PREPARATION OF EIS

Purpose of pt 2

Section 34BG states that the purpose of this part is to provide a process for the chief executive to approve an application to voluntarily prepare an EIS under this part.

It is in the interests of the community and the Government for EIS processes to be limited to appropriate projects (eg to ensure resources and scrutiny are directed to the most significant projects). It is also important that the standard of EISs in general remain high so that they can maintain a high level of public confidence and response.

Projects that may be approved for EIS

Section 34BH provides that an application for approval to prepare an EIS may be made to the chief executive, unless:

- a requirement under this Act has already been made for the same project; or

- an EIS for the project is required under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* and the Commonwealth has not accredited the process in this chapter for the project; or
- an EIS for the project is required under another State Act (eg the *State Development and Public Works Organisation Act 1971)* and that Act does not allow it to be prepared under the process in this chapter.

Requirements for application

Section 34BI requires the application to:

- be in the approved form;
- provide sufficient information to decide whether an EIS is appropriate for the project; and
- show that the proponent has access to land to obtain the necessary information for an EIS.

The application must also include information on:

- what the project will be;
- where it will be;
- who are the "affected persons" (see Section 34AB); and
- who the "interested persons" proposed by the proponent are and how it is proposed to consult these.

This section also allows for a regulation to be made to require a fee with the application.

Deciding application

Section 34BJ requires the chief executive to consider an application from the proponent to voluntarily prepare an EIS for a project. The chief executive must decide either to grant or refuse the approval. The chief executive may grant the approval only if the chief executive considers an EIS is appropriate for the project. The purposes of an EIS are stated in section 34D. Among the matters relevant to whether an EIS is appropriate

are whether the project is genuinely feasible and likely to proceed and whether the likely impacts of the project or the level of public interest are sufficient to warrant an EIS.

The chief executive's decision is not appealable on the merits, however, the *Judicial Review Act 1991* is not to be excluded.

There is no time limit on the chief executive to decide the application. It is considered more appropriate to leave the time for such negotiations on the decision to the discretion of the chief executive, rather than by imposing time periods in the legislation. The chief executive may be involved in negotiations with the applicant, stakeholders and other agencies to determine whether an EIS is appropriate for the project. In other circumstances, the application may be straightforward and decided within a very short time.

CHAPTER 2B—ENVIRONMENTAL AUTHORITIES AND DEVELOPMENT APPROVALS OTHER THAN FOR MINING ACTIVITIES

PART 1— PRELIMINARY

Application of ch 2B

Section 34BK explains the application of chapter 2B.

Types of environmental authority under ch 2B

Section 34BL is a new section that lists the 5 types of environmental authorities under chapter 2B. These are: a licence for a level 1 environmentally relevant activity; a provisional licence for a level 1 environmentally relevant activity; a level 1 approval for a level 1 environmentally relevant activity; a level 2 approval for a level 2 environmentally relevant activity; and an integrated authority to the extent that it consists of an environmental authority mentioned in the section.

Subsections (2) and (3) list the terms used to distinguish whether environmental authorities require development approval under the *Integrated Planning Act 1997.*

PART 2—DEVELOPMENT APPROVALS

Division 1 Assessable development use for Integrated Planning Act

Development for Integrated Planning Act sch 8, pt 1 item 6

Section 34BM is relocated from the *Environmental Protection Regulation 1998*, section 63A. The effect of the section does not change. The section states that for the *Integrated Planning Act 1997*, schedule 8, part 1, item 6 a material change of use (other than a mining activity) is taken to be assessable development for carrying out an environmentally relevant activity.

Additional material change of use for Integrated Planning Act

Section 34BN replaces section 70A in the Act. This section has been amended and relocated. The amendment states that a mining activity is not assessable development under the *Integrated Planning Act 1997*.

Division 2—Assessing development applications

Application of div 2

Section 34BO replaces section 60Z in the Act. This section has been amended and relocated. Division 2 applies if the administering authority is the assessment manager or a referral agency for a development approval under *the Integrated Planning Act 1997* for an environmentally relevant activity.

Assessing development applications

Section 34BP replaces section 60ZA of the Act. This section has been relocated and amended. It provides for the administering authority to assess an application for a development approval as if it were an application for an

environmental authority. The administering authority is required to follow the stated procedure for assessing an environmental authority application having regard to time limitations imposed by the *Integrated Planning Act 1997*.

Conditions of development approval

Section 34BQ replaces section 60ZB of the Act. The section has been relocated and amended, however the changes do not affect the operation of the existing provision. The conditions of a development approval are subject to section 3.5.30 of the *Integrated Planning Act 1997*, which states that conditions must be relevant or reasonable.

Division 3—Effect of issue of certain development approvals

Development approvals continue to have effect

Section 34BR replaces section 60ZC of the Act. The section has been relocated without amendment to part 2, division 3 as it relates to administration of development approvals.

PART 3—ENVIRONMENTAL AUTHORITY APPLICATIONS

Division 1—Obtaining licence (with development approval)

Operation of division 1

Section 34BS replaces section 60F of the existing Act. This section has been amended and relocated. This division relates to licence applications requiring a development approval under the *Integrated Planning Act 1997*.

Requirements for application

Section 34BT replaces section 60G of the Act. This section has been amended and relocated. The section lists the requirements of an application for a licence with a development approval. The amendments are designed to improve the operation of the section.

Deciding application

Section 34BU replaces section 60H of the Act. The section has been amended and relocated to division 2, which applies specifically to obtaining a licence for level 1 activity for which development approval is required under the *Integrated Planning Act 1997*. The administering authority must assess an application within 28 days of the application date and decide whether to grant or refuse it.

Criteria for decision

Section 34BV replaces section 60I of the Act. The section has been amended and relocated. The provision lists the criteria the administering authority must consider in deciding an application for a licence. The section has been relocated to division 2, which applies specifically to obtaining a licence for level 1 activity for which development approval is required under the *Integrated Planning Act 1997*.

Conditions that may be imposed

Section 34BW replaces section 60K of the Act. The section has been amended and relocated to division 2, which applies specifically to obtaining a licence for level 1 activity for which development approval is required under the *Integrated Planning Act 1997*. The administering authority may impose conditions on a licence with a development approval relating to the integrated environmental management system and the giving of a financial assurance. The administering authority may impose conditions that apply after the licence has ended or ceased to have effect.

Steps after granting application

Section 34BX replaces section 60J of the Act. The section has been amended and outlines the steps that the administering authority must take when a licence is granted.

New subsection 34BX(1)(a) is the result of transferring section 60G(2), referring to a regulation prescribing circumstances when fees may not accompany the application.

Division 2—Obtaining licence (without development approval)

Subdivision 1—General provisions for obtaining licence

Operation of sdiv 1

Section 34BY applies subdivision 1 to the assessment of a licence application for a licence (without development approval).

Definitions for sdiv 1

Section 34BZ defines the terms "person" and "submission period" for the subdivision.

Requirements for application

Section 34CA replaces section 41(1) of the Act. The section lists the requirements for an application for a licence without a development approval.

Public access to applications

Section 34CB replaces section 42(3) of the Act. The section has been amended and relocated. The administering authority must keep the application open for inspection by members of the public, from the time the application is made to the review date. Further, a person may take an extract from the application, or on payment of a prescribed fee, a copy of the application.

The administering authority may allow an application to proceed if it is satisfied the applicant has substantially complied with the public notice provisions.

Public notice of application

Section 34CC replaces section 42(1) of the Act. The section has been amended and relocated. The applicant must publicly notify an application for a licence without a development approval. The administering authority may allow an application to proceed if it is satisfied the applicant has substantially complied with the public notice provisions.

Required content of application notice

Section 34CD replaces and relocates section 42(2) of the Act. It lists the requirements for public notification of an application for a licence without a development approval.

Declaration of compliance

Section 34CE replaces subsection 43(2) to provide a process for applicants to advise the administering authority that they have complied with the public notice requirements. A statutory declaration is required from the applicant stating that the proponent has complied with the requirements of the Act.

Substantial compliance may be accepted

Section 34CF is a new section which provides a process for the administering authority to either accept an application where there has been substantial compliance or reject an application that has not complied with the public notice requirements. If the authority decides not to allow the application to proceed, it must by written notice, advise the applicant and give a new notice period for the application.

Right to make submission

Section 34CG provides for a person to make a submission within the submission period, to the chief executive of the administering authority.

Acceptance of submissions

Section 34CH requires the administering authority to accept a properly made submission and makes provision for the administering authority to accept a written submission even if it is not a properly made submission.

Deciding application

Section 34CI replaces section 43(1) of the Act. The section has been amended and relocated to require the administering authority to either grant or refuse the application within the later of the stated periods.

Criteria for decision

Section 34CJ replaces section 44 of the Act. The section has been amended and relocated. Section 34CJ(a) states the procedures for the administering authority to decide to either grant, refuse or impose conditions on an environmental authority. Section 34CJ(b) lists the criteria the administering authority must consider in making the decision.

Conditions that may be imposed

Section 34CK replaces section 46 of the Act. The section has been amended and relocated. The administering authority may impose conditions on a licence that it considers necessary and desirable, and must include any condition required under an environmental protection policy. Further, the section provides a list of matters that the authority may require the licence holder to do.

The licence holder may be required to carry out or report on stated rehabilitation or remediation work relating to the environmentally relevant activity.

Section 34CK(3)(c) provides for a condition to be made about the lodging of a financial assurance for an activity under section 115 of the Act.

A new section 34CK(4) clarifies that a condition may be imposed by an administering authority that places an obligation on the licence holder after the authority has ceased. This has the effect of ensuring that licence holders take responsibility, as part of their licence conditions, for any subsequent rehabilitation or remediation work that may be required as a result of their activities.

Steps after granting application

Section 34CL replaces and relocates section 45 of the Act. The section lists the steps that the administering authority must take when a licence is granted.

Subdivision 2—Provisional licences

When provisional licence may be issued

Section 34CM replaces and relocates subsections 47(1) and (5) of the Act. The section explains the conditions under which an administering authority may issue a provisional licence if it is satisfied that the applicant can not provide all the information (the missing information).

Steps after decision to grant provisional licence

Section 34CN replaces section 47(2) of the Act. The section has been amended and relocated. The section lists the steps the administering authority must take within 10 days following a decision to issue a provisional licence.

Section 34CN(c)(ii) requires the administering authority to give the holder of a provisional licence written notice about the missing information that should have accompanied the licence application.

The administering authority must also give any submitter for the licence application a written notice about the decision to issue the provisional licence and the reasons for it. A submitter is defined in schedule 4 (Dictionary) and means a person who makes a properly made submission about the application.

There is no appeal right for a submitter against the administering authority's decision to issue the provisional licences on the merits. However, a submitter may appeal a decision to grant a licence application.

Term of provisional licence

Section 34CO replaces and relocates subsections 47(3) and (4) of the Act. A provisional licence takes effect either on the day stated in it or, if a properly made submission was made on the review date for that application. This amendment will allow a provisional licence holder to commence the activity before the end of the 14 day review period required under section 202 of the Act, where no submissions have been made.

Reminder notices

Section 34CP is a new provision. The administering authority is required to send the holder of a provisional licence a reminder notice 30 days before the licence expires. The notice must state the day the provisional licence is due to expire, advise the provisional licence holder that they may make application for a new licence and provide details of the missing information from the original application.

A contravention of this section by an administering authority does not effect the expiry of the provisional licence.

Application for new licence

Section 34CQ provides the process for cancelling a provisional licence and obtaining a new licence. Subdivision 1 (General Provisions for Obtaining a licence) applies, with necessary changes, to the latest licence application.

Division 3—Obtaining level 2 approval

Operation of div 3

Section 34CR applies division 3 for the assessment of a level 2 environmentally relevant activity for which development approval is not required under the *Integrated Planning Act 1997*.

Requirements for application

Section 34CS replaces section 41(1) of the Act. The section has been amended and relocated. The section lists the requirements for an application for a level 2 approval without a development approval.

Deciding application

Section 34CT replaces section 43(1) of the Act. The section has been amended and relocated. The administering authority is required to assess an application within 28 days of the application date and decide whether to grant or refuse it.

Criteria for decision

Section 34CU replaces section 44 of the Act. The section has been amended and relocated. The provision lists the criteria the administering authority must consider in deciding an application for a level 2 approval.

Conditions that may be imposed

Section 34CV replaces section 46 of the Act. The section has been amended and relocated. This section states the conditions the administering authority may impose conditions on a level 2 approval.

Steps after granting application

Section 34CW replaces section 45 of the Act. The section has been amended and relocated. The section describes the steps that the administering authority must take when a level 2 approval is granted.

Division 4—Miscellaneous provisions

When environmental authorities under pt 3 take effect

Section 34CX makes provision for the commencement of all environmental authorities issued under part 3, other than a provisional licence.

Term of environmental authority

Section 34CY replaces section 45(3) to (4) of the Act. It provides for a licence to continue to have effect unless it is surrendered, converted into a level 1 approval, cancelled or suspended. A level 1 approval continues to have effect unless it is cancelled or suspended and a level 2 approval continues to have effect for the period stated in it.

Information notice about decision on application

Section 34CZ requires the administering authority to give an applicant for an environmental authority under part 3 an information notice in certain circumstances.

The term "information notice" replaces the term "written notice" and is defined in schedule 4.

PART 4—CONVERSION OF LICENCE TO LEVEL 1 APPROVAL

Division 1—Conversion application

When conversion application may be made

Section 34DA replaces section 60O of the Act. The section has been amended and relocated. The section lists the circumstances under which licence holders may apply for a conversion to a level 1 approval.

A conversion application may not be made for a level 1 approval if the activity is subject to an environmental protection order.

Requirements for application

Section 34DB is a new provision that describes the requirements for an application for the conversion of a level 1 approval.

Division 2—Processing conversion application

Deciding application

Section 34DC replaces and relocates subsections 43(1) and 60P of the Act. The section delineates the time frames allowed for the administering authority to decide a level 1 approval conversion application.

Criteria for decision

Section 34DD replaces sections 44 and 60Q of the Act. The section has been amended and relocated. The section lists the criteria the administering authority must consider in deciding an application for a conversion to a level 1 approval.

Conditions of converted authority

Section 34DE replaces and relocates sections 46(5) and (6) and 60S of the Act. The section lists the conditions the administering authority may impose on a level 1 approval.

Subsection (3) outlines the different requirements for licences with and without a development approval.

Steps after granting application

Section 34DF replaces sections 45(1) and 60R(1) of the Act. The section lists the steps that the administering authority must take when a level 1 approval is granted.

When conversion takes effect

Section 34DG replaces sections 45(3A) and 60R(2) of the Act. The amended section allows a level 1 approval holder to commence an activity prior to the completion of the 14 day review period if there were no submissions received following the submission period.

Subsection (e) provides for a level 1 approval to take effect on the happening of an event stated on the approval.

Information notice about decision on conversion application

Section 34DH replaces sections 48(2) and (3) and 60T of the Act. The section provides the process for an administering authority after a decision to refuse a conversion application for a level 1 approval.

The administering authority must give any submitters an information notice about the decision to grant a level 1 approval not requiring development approval under *Integrated Planning Act 1997*.

PART 5—AMENDING ENVIRONMENTAL AUTHORITY BY APPLICATION

Environmental authorities that may be amended by application

Section 34DI(1) replaces sections 49(1) and 60A(1) of the Act and provides that a licensee (without a development approval) or a level 1 approval holder (without development approval) may apply to the administering authority to amend their licence or approval.

Subsection (2) clarifies the application of this part. Licensees (with development approval), level 1 approval holders (with development approval) and level 2 approval holders can not apply to the administering authority to amend their environmental authority under this part.

Requirements for amendment application

Section 34DJ replaces sections 49(2) and 60A(2) of the Act. The section lists the requirements for an application for an amendment.

Public notice may be required for licence amendment

Section 34DK replaces subsections 49(3), (4), (5), (6) and (8) of the Act. The section has been amended and relocated. The section lists the criteria for public notice of amendment applications.

The administering authority must send the applicant an information notice if the authority decides the public notice requirements are to apply.

Deciding application

Section 34DL replaces sections 49(7) and 60A(3) of the Act. The section has been amended and relocated. The section states the period for the administering to decide to grant or refuse an amendment application.

Criteria for decision

Section 34DM replaces sections 49(9) and 60A(4) of the Act. It has been relocated to chapter 2B, part 5. The criteria for an application for an environmental authority apply for an application to amend a licence. The standard criteria applies to an application to amend a level 1 approval.

Decision on application

Section 34DN replaces sections 49(10) and 60A(5) of the Act and provides that the administering authority may grant an application if satisfied the amendment is necessary or desirable.

Steps after making decision

Section 34DO replaces parts of sections 49(10)(b), 51(1) and (2) and 60A(6) and (7) of the Act. It provides the procedure the administering authority must take, within 10 days, following a decision to grant an amendment application.

When amendment takes effect

Section 34DP replaces section 51(3) of the Act and states when an amendment takes effect. The amendment can take effect from the day the amendment is made, a later day stated in the amended licence or level 1 approval or another day agreed to by the licensee or level 1 approval holder.

Section 34DP(c) replaces section 51(3)(a) of the Act. The amendment allows for a licence to take effect from the review date if public notice has been made and a properly made submission has been received. This will allow a licence holder to commence an activity prior to the completion of the 14 day review period, where the administering authority has not received any submissions during the submission stage.

PART 6—DEALINGS WITH LICENCES

Division 1—Required notice to proposed buyer

Notice of disposal by licence holder

Section 34DQ replaces sections 53 and 60X of the Act. The section outlines the process the holder of a licence must undertake when selling a business. The licence holder must give written notice to the proposed transferee who must apply under division 2 for the transfer of the licence. A maximum penalty of 50 penalty units applies.

Subsections (3) and (4) define the rights of the parties if the licence holder does not comply with subsection (2).

Division 2—Transfers of licences (without development approval)

Transfer only by approval

Section 34DR is a new provision that states when a licence (without development approval) may be transferred.

Requirements for transfer application

Section 34DS replaces section 55 of the Act. The section states the requirements for a transfer application.

Deciding application

Section 34DT replaces section 56 of the Act. The section provides that the administering authority must decide to grant or refuse a transfer application within 28 days after the application date.

Steps after making decision

Section 34DU replaces section 57 of the Act. The section lists the steps the administering authority must take within 10 days of the transfer application being decided.

Division 3—Surrender of licences (without development approval)

Surrender of licence

Section 34DV replaces section 52 of the Act. A development approval may be surrendered only if the holder gives the administering authority a written notice.

PART 7—AMENDMENT, CANCELLATION OR SUSPENSION OF ENVIRONMENTAL AUTHORITY BY ADMINISTERING AUTHORITY

Division 1—Conditions for amendment, cancellation or suspension

Subdivision 1—Amendment

Corrections

Section 34DW enables the administering authority to amend an environmental authority at any time if the amendment does not adversely affect any person's interests and written notice of the amendment is given to the holder of the environmental authority.

Other amendments

Section 34DX replaces sections 50 and 60B of the Act. It lists the circumstances where the administering authority may amend an environmental authority under this chapter, other than a licence (with development approval) or level 2 approval, at any time.

Subdivision 2—Cancellation or suspension

Conditions

Section 34DY replaces sections 59, 60D, 60M and 60U of the Act. It states the circumstances in which the administering authority may amend, cancel or suspend an environmental authority.

The administering authority may suspend or cancel an environmental authority (other than a level 2 approval) if one or more events listed in subsection (3) has happened and the procedure provided for in division 2 is followed.

Subsection (2) replaces sections 60D and 60U of the Act. The section gives the administering authority the option of cancelling a level 1 approval and replacing it with a licence in the same circumstances. Subsection (3) lists the circumstances when an administering authority may suspend or cancel an environmental authority.

Subsection (3)(d) is a new provision which allows the administering authority to either cancel or suspend a licence if the licensee has not complied with an annual notice.

Division 2—Procedure for amendment without agreement, cancellation or suspension

Application of div 2

Section 34DZ states that division 2 applies if the administering authority decides to amend, cancel or suspend an environmental authority. This division does not apply for an amendment of an environmental authority where the administering authority is making a correction or the holder has agreed to the amendment in writing.

Notice of proposed action

Section 34EA replaces sections 50(3), 60(1), 60B(3), 60E(1), 60N(1) and 60V(1) of the Act.

It lists the requirements of the notice the administering authority must give to the holder of an environmental authority when it proposes to amend, suspend or cancel the authority ("the proposed action").

Subsection (3) provides for the administering authority to set a suspension period contingent on the start or finish of an event stated in the notice.

Considering representations

Section 34EB replaces sections 50(4) and (5) and 60B(4) as they require the administering authority to consider all written representations made by the environmental authority holder.

Decision on proposed action

Section 34EC replaces sections 60(2) and (3), 60E(2) and (3)(a), 60N(2) and (3) and 60V(2) and (3)(a) of the Act as they relate to the taking of the proposed action.

It lists the actions the administering authority may take, after considering any written representations, if the authority believes a ground exists for taking the proposed action (the proposed action decision).

Notice of proposed action decision

Section 34ED(1) replaces sections 60(3) to (5), 60E(3)(b) to (5), 60N(3)(b) to (5) and 60V(3) to (5) of the Act. The administering authority is required to give an environmental authority holder, an information notice about the proposed action decision within 10 days.

Subsection (2) replaces sections 60(7), 60E(7), 60N(7) and 60V(7) of the Act and states when the proposed action decision will take effect.

Subsection (3) replaces sections 60(8), 60E(8), 60N(8) and 60V(8) of the Act and provides for the cancellation or suspension of an environmental authority, as a result of a conviction of the holder under the Act, not to take effect until the appeal period has ended or the appeal is finally decided. The decision has no effect if the conviction is overturned on appeal.

Division 3—Steps after making decision

Steps for corrections

Section 34EE is a new provision which provides the steps the administering authority must make, within 10 days of giving notice to an environmental authority holder under section 34DX, to make a correction of an environmental authority. The administering authority must make the correction and record the amendment in the register.

Steps for amendment by agreement

Section 34EF is a new provision which lists the steps the administering authority must take within 10 days after amending an environmental authority under section 34DX.

Steps for amendment without agreement or for cancellation or suspension

Section 34EG replaces sections 51(2), 60(6), 60E(6), 60N(6), 60V(6) of the Act and lists the steps the administering authority must take, within 10 days, following a decision to amend, cancel or surrender an environmental authority.

PART 8—MISCELLANEOUS PROVISIONS

Environmental authorities for new environmentally relevant activities

Section 34EGA replaces section 40 of the Act. The transitional provision applies to environmentally relevant activities (ERA), other than mining activities and ensures the introduction of the amended Act captures those activities that require an environmental authority.

Subsection (1) applies if an activity becomes an ERA, on or after the proclamation of this amendment Act, if immediately before the activity became an ERA, a person was carrying out the activity and within 4 months after the day the activity becomes an ERA the person applies for an environmental authority.

Subsection (2) states that the penalty provisions under section 118ZZH and 118ZZI do not apply to a person until an application is granted, or the day a notice is given refusing the application or where the administering authority fails to decide the application and that failure is a deemed refusal.

Subsection (3) states that the administering authority may take 3 months to decide an application, despite section 34CI(1) (Decision period).

Subsection (4) states that an activity does not first become an ERA on a day if, immediately before the day, an environmental authority could be issued to a person for the activity.

Authority may call conference

Section 34EH replaces section 64 of the Act and has been relocated. The term "submitters" has been replaced by the term "interested parties". The administering authority may invite an applicant and any submitters to a conference to assist the administering authority in deciding the application.

Failure to decide application taken to be refusal

Section 34EI replaces section 67 of the Act. If the administering authority fails to decide an application within the required period, the failure is taken to be a decision by the authority to refuse the application at the end of the period.

Grounds for refusing application for or to transfer authority

Section 34EJ replaces sections 48, 60L and 60T of the Act and applies to an application for an environmental authority or transfer of an environmental authority.

Subsection (2) lists the circumstances where the administering authority may refuse an application described in subsection (1). Subsection (2)(a) provides for the administering authority to refuse an application if it decides a proposed holder is not a suitable person (refer schedule 4 (Dictionary)

The administering authority may refuse an application if a 'disqualifying event' has happened to the person, partnership or corporation. This includes any partner of a partnership, or for a corporation, any of its executive officers or another corporation where its executive officers are, or have been

an executive officer. The definition of 'disqualifying event' is defined in schedule 4 (Dictionary).

In deciding whether a holder is a suitable person, the administering authority may consider the holder's environmental record and the holder's ability to comply with any conditions of the environmental authority.

No dealings with licence (with development approval) or approval

Section 34EK is a new provision which clarifies that licences (with development approval), level 1 and 2 approvals can not be surrendered or transferred.

Notice of ceasing activity under certain environmental authorities

Section 34EL replaces sections 54 and 60Y of the Act. The section applies to either a licence holder or level 1 approval holder without development approval.

The holder of an environmental authority who ceases the environmentally relevant activity, is required to notify the administering authority within 14 days. The prescribed maximum penalty for not complying with this provision is 50 penalty units.

Death of licence holder

Section 34EM(1) replaces section 69 of the Act and states the procedure for the personal representative of a licence holder to become the holder of the licence. If a licence holder dies, the personal representative of the holder's estate is taken to be the holder of the licence for 6 months from the day of the holder's death, or for any longer period agreed to by the administering authority.

No provision is made for what happens when an approval holder dies. The Act does not provide for approvals (level 2 environmental authorities) to be transferred or surrendered. It would be inconsistent with the existing provisions of the Act to provide for transfers for approvals when the holder dies, without providing other surrender or transfer provisions for approvals.

CHAPTER 2C—ENVIRONMENTAL AUTHORITIES FOR MINING ACTIVITIES

PART 1—PRELIMINARY

Division 1—Introduction

Purpose of ch 2C

Section 34EN states the purpose of this chapter, which is to provide for environmental authorities for mining activities.

Division 2—Key Definitions for ch 2C

What is a "mining activity"

Section 34EO provides a definition of "mining activity". To fall within this definition, the activity must firstly be authorised under the *Mineral Resources Act 1989* to take place on either land to which a mining tenement relates, or land authorised under the *Mineral Resources Act 1989* for access to land to which a mining tenement relates. Secondly the activity must fall within the classification of activities mentioned in subsection (2).

Under subsection (2)(a) the activity must be either prospecting, exploration or mining under the *Mineral Resources Act 1989*, or another Act relating to mining. At present, these terms are defined in section 5 of the *Mineral Resources Act 1989* as follows:

"prospect" means to take action, which is not hand mining, to determine the existence, quality and quantity of minerals on, in or under land by using metal detectors or other similar hand held instruments and/or sampling using only hand held implements.

"explore" means to take action to determine the existence, quality and quantity of mineral on, in or under land or in the waters or sea above land by prospecting, using instruments, equipment and techniques appropriate to determine the existence of any mineral, extracting and removing form land

for sampling and testing an amount of material, mineral or other substance in each case reasonably necessary to determine its mineral bearing capacity or its properties as an indication of mineralisation or doing anything else prescribed under a regulation.

"mine" is defined in section 6A as meaning to carry on an operation with a view to, or for the purpose of winning mineral from a place where it occurs, or extracting mineral from its natural state, or disposing of mineral in connection with, or waste substances resulting from, the winning or extraction.

Under subsection (2)(b) An activity can also be processing a mineral won or extracted by an activity which falls within the definition of prospecting, exploration or mining under the *Mineral Resources Act 1989* or another Act relating to mining.

Under subsection (2)(c) The definition of activity also extends to an activity which is directly associated with, or facilitates or supports, either a prospecting, exploration or mining activity under the *Mineral Resources Act 1989* or another Act relating to mining, or processing a mineral won or extracted by an activity which falls within the definition of prospecting, exploration or mining activity under the *Mineral Resources Act 1989* or another Act relating to mining and which may cause environmental harm. This definition can therefore include environmentally relevant activities as outlined in Schedule 1 of the *Environmental Protection Regulation 1998.*

An activity can also be rehabilitating or remediating environmental harm because of a mining activity which can be categorised through any of the definitions outlined under subsections (2)(a) to (c).

An activity can also be action which is taken to prevent environmental harm because of an activity mentioned in subsections (2)(a) to (d) or an activity prescribed under a regulation.

Types of "environmental authority (mining activities)"

Section 34EP states that an environmental authority (mining activities) may be for mining activities which are authorised under a mining tenement under the *Mineral Resources Act 1989.*

What is a "mining project"

Section 34EQ defines a mining project as all mining activities carried out, or proposed to be carried out, under one or more mining tenements, in any combination, as a single integrated operation.

What are the "application documents"

Section 34ER defines "application documents" for an environmental authority (mining activities). An environmental management document includes an environmental management plan or an environmental management overview strategy.

The content and purpose of an environmental management plan is defined in part 5, division 3, subdivision 3 of chapter 2C. (Note that the definition of environmental management plan for this chapter differs from the definition in chapter 2A). The content and purpose of an environmental management overview strategy is defined in section part 5, division 3, subdivision 3 of chapter 2C.

Division 3—Standard Mining Activities

Standard mining activities

Section 34ES provides the criteria for the administering authority to decide that a mining activity or proposed mining activity is a standard mining activity.

All activities authorised under the *Mineral Resources Act 1989* on prospecting permits and mining claims have a low risk of serious environmental harm and consequently all activities on prospecting permits and mining claims are standard mining activities.

Activities authorised by an environmental authority (exploration), an environmental authority (mineral development), or an environmental authority (mining lease) are standard mining activities only if all mining activities allowed, or to be allowed, under the environmental authority meet the criteria prescribed under a regulation for that type of environmental authority.

However, if the environmental impact of all mining activities allowed, or to be allowed, under the environmental authority is no greater than the environmental impact of all activities allowed under any environmental authority of the same type that meets the prescribed criteria, the activity may be determined by the administering authority to be a standard mining activity. For example, the prescribed criteria set a maximum area of land disturbance for a standard mining activity but the administering authority may approve an application for a standard environmental authority which proposes land disturbance more than the prescribed limit, provided the EPA is satisfied that the increased area of disturbance will not increase the environmental impact caused by the activities.

PART 2—GENERAL PROVISIONS FOR OBTAINING ENVIRONMENTAL AUTHORITY (MINING ACTIVITIES)

Division 1—Introduction

Outline of process to obtain environmental authority (mining activities).

Section 34ET describes the requirements for making an environmental authority (mining activities) application.

If the application is for either an environmental authority (exploration), an environmental authority (mineral development) or an environmental authority (mining lease) then, before the application is decided, an assessment level decision under division 3 is required. The assessment level decision, made under division 3 of part 2, chapter 2C and explained later in these notes, is made by the administering authority after an application for an environmental authority (mining activities) is made. The administering authority must categorise the application as either standard or non-standard.

Under subsection (3), the relevant parts setting out the process for assessing an application are listed as follows: for an environmental authority (prospecting)—part 3, for an environmental authority (mining claim)—part 4, for an environmental authority (exploration, or an environmental authority (mineral development)—part 5 and for an environmental authority (mining lease)—part 6.

The table in subsection (4) sets out a summary of the main steps required for each tenure type under subsections (2) and (3) mentioned above and identifies the relevant sections for the required steps such as:

- whether an assessment level decision is required,
- whether additional conditions are allowed for a standard application,
- whether an environmental impact statement can be required,
- whether environmental management documents are required; and
- whether there is a requirement for public notice.

Note: while the legislation makes provision for an EIS to be required for any non-standard mining activity, policy guidelines will be issued stating that an EIS will not be required for exploration.

Division 2—Applications

Subdivision 1—General provisions about applications

Who may apply

Section 34EU states that only a person who is the holder of, or the applicant for, each relevant mining tenement may apply for an environmental authority (mining activities). Reference is made in footnote 68 to section 34KO which sets out restrictions on authority or transfer taking effect.

Section 34EU is subject to section 34EX which requires a single authority for a mining project (see later notes for section 34EX).

General requirements for application

Section 34EV sets out the requirements (the application requirements) for an application for an environmental authority (mining activities). It must be made to the mining registrar of the MRA Department in the approved form. The application must state whether the application is for a standard environmental authority (mining activities) or a non-standard environmental authority (mining activities).

There are two ways of making an application. If the applicant is certain that the application is a non standard application then the applicant can prepare the relevant environmental management documentation and include them with the application, ie. the EM Plan and the EMOS. If, however, if it is not known whether the administering authority will decide whether the activity is standard or non-standard, then the applicant may lodge the application and the administering authority will make the assessment level decision.

The requirements for the different types of applications are listed.

An environmental management plan or environmental management overview strategy (EMOS) may be included with the application.

Subdivision 2—Applications for mining projects

Single application required for mining project

Section 34EW applies to a person who applies for an environmental authority (mining activities) for mining activities proposed to be carried out as a mining project. The person must apply for a single environmental authority which includes all mining activities that form the project. In other words, where a proponent is wishing to carry out a "mining project" (ie. all mining activities are carried out, or proposed to be carried out, under 1 or more mining tenements, in any combination, as a single integrated operation) then the proponent must apply for a single authority.

If any relevant mining tenement for the application is a mining claim or mining lease, part 6, divisions 6 to 8 must be complied with for the whole application.

If the administering authority grants the application it may issue either one environmental authority (mining activities) for all the activities (a "project authority"), or alternatively two or more environmental authorities (mining activities) for the activities.

A project authority must state each type of environmental authority (mining activities) that forms the project authority and also identify the conditions which apply to each type.

For applying parts 7 to 12 to a project authority each type of environmental authority (mining activities) that forms the project authority is taken to be an environmental authority (mining activities) of that type.

Single authority required for mining project

Section 34EX applies where an environmental authority (mining activities) has been granted for a mining project. Where this has happened, the holder of the authority cannot apply for a separate environmental authority (mining activities) for an additional mining activity proposed to be carried out as part of the mining project. Nothing in this section prevents the holder from applying to amend or replace the environmental authority.

Subdivision 3—Joint applications

Application of subdivision 3

Section 34EY applies this subdivision where two or more persons apply jointly for one or more environmental authorities (mining activities).

Joint application may be made

Under *section 34EZ* the administering authority may accept one or more applications made by one of the persons for all of the persons applying jointly, provided the administering authority is satisfied the person is authorised to make the application for each of those persons. Such an application is termed a "joint application".

Subsection (2) clarifies that the same person may make multiple joint applications for environmental authorities (mining activities) on behalf of a group of joint applicants.

Appointment of principal applicant

Section 34FA allows the applicants for a joint application to appoint one person as the principal applicant for the application. The appointment may only be made, however, in the joint application, or by a signed notice from

all the joint applicants to the administering authority. The appointment can be cancelled by a signed notice from all of the applicants to the administering authority.

Effect of Appointment

Section 34FB allows the principal applicant for the joint application to give or submit to the administering authority a notice or other document relating to the application. This is done on behalf of all applicants for the application.

The administering authority may give a notice or other document relating to the application to all the applicants by giving it to the principal applicant. Furthermore, the administering authority can make a requirement relating to the application, of all the applicants, by making the requirement of the principal applicant.

Division 3—Assessment level decision for certain applications

Operation of div 3

Section 34FC explains that Division 3 provides for an "assessment level decision" about the level at which an application is to be assessed (ie. whether the application is a standard or non-standard application). The assessment level decision is only required for applications for an environmental authority (exploration), an environmental authority (mineral development), or an environmental authority (mining lease).

The administering authority must make the assessment level decision, subject to section 34FG. Section 34FG entitles the EPA Minister to make the assessment level decision, at any time prior to an environmental authority being issued (refer to section 34FG for further information).

Assessment level decision

Section 34FD states that the administering authority must, within the prescribed period, decide whether the application is a standard or a non-standard application. Standard applications are those which are considered to have a low risk of serious environmental harm.

Subsection (2) sets out the criteria the administering authority must consider in deciding whether an application is a standard application. The administering authority may categorise an application as standard only if it considers that each relevant mining activity is a standard mining activity, as defined under section 34ES *and* there are relevant standard environmental conditions for the activity. The standard environmental conditions are those approved for the activity under section 219AA.

An application must be treated as non-standard if any proposed mining activity that forms part of the project is not a standard mining activity.

Consequence of failure to decide

Section 34FE details what happens where the administering authority does not make the assessment level decision within 5 business days after it receives the application. If the assessment level decision is not made within this time period then, where the application is for a standard authority, the administering authority is taken to have decided that the application is a standard application. Where the application is for a non-standard application, then the administering authority is taken to have decided that the application is a non-standard application.

Decision about EIS requirement

Section 34FF applies to applications which are decided or taken to be non-standard. For such applications, the administering authority must decide whether an environmental impact statement is required within the period prescribed under a regulation.

The administering authority must, in making this decision consider the standard criteria. The administering authority may also consider other matters it considers relevant. The standard criteria are defined in schedule 4 of the *Environmental Protection Act 1994*.

If the administering authority does not make the decision within the prescribed period, it is taken at the end of the period to have decided that no environmental impact statement is required.

Ministerial decision about assessment level

Section 34FG empowers the EPA Minister to make the assessment level decision, overriding any previous assessment level decision by the administering authority, at any time prior to an environmental authority being issued. The EPA Minister may need to intervene and make a decision where new issues may arise regarding the application, such as issues concerning the public interest or environmental impacts. These issues may arise at any time during the application process, for example, during the public notification or objection stage.

If the Minister decides that the application is a non-standard application, the Minister must also decide whether there is to be an EIS requirement for the application and at what stage, or step within a stage under part 5 or 6, the processing of the application must start or resume. However, the stage or step must not be after the giving of the draft environmental authority.

The assessment of the application must start or resume at the stage or step decided by the Minister. The Minister must consider the standard criteria in making his decision under this section. The Minister is not, however, limited in the matters which he may consider.

Notice for non-standard applications

Section 34FH provides that where the assessment level decision is that the application is a non-standard application, the administering authority is required, within 10 business days after the decision is made, to give the applicant a written notice. The notice must state that the application is to be assessed as a non-standard application and whether or not an environmental impact statement is required for the application. Where the Minister has made the decision, the written notice must state the stage or step within a stage decided by the Minister in the process under part 5 or 6 for the processing of the application to start or resume. Note: part 5 refers to processing environmental authority (exploration) and environmental authority (mineral development) and part 6 refers to environmental authority (mining lease) applications.

PART 3—PROCESSING ENVIRONMENTAL AUTHORITY (PROSPECTING) APPLICATIONS

Operation of pt 3

Section 34FI states that this part applies to applications for environmental authorities (prospecting).

Deciding application

Section 34FJ states that, in considering an application for an environmental authority (prospecting) and deciding whether to grant or refuse it, the administering authority must consider the applicant's ability to comply with the relevant standard environmental conditions, any report on the applicant's suitability (see section 219AK) and any application under the *Mineral Resources Act 1989* for a relevant prospecting permit. The administering authority may also consider other matters.

The section also states that the administering authority must decide either to grant or to refuse the environmental authority within the period prescribed in a Regulation.

Consequence of failure to decide

Section 34FK states that if an applicant submits a valid application for an environmental authority (prospecting) and the administering authority has not decided to refuse the application within the period prescribed by regulation, the environmental authority is taken to have been granted.

Grant of application

Section 34FL states that if an environmental authority (prospecting) is granted, the administering authority must impose, as conditions of the authority, the standard environmental conditions set out in the relevant Code of Environmental Compliance. The administering authority can not impose any condition on an environmental authority (prospecting) other than the standard environmental conditions set out in the relevant Code of Environmental Compliance. The administering authority must insert the

environmental authority into the appropriate register and give a copy of the authority to the applicant within 10 business days after the later of the following events—the making of the decision or the granting of each relevant prospecting permit.

Notice of Refusal

Section 34FM states that if the administering authority decides to refuse an application for an environmental authority (prospecting), it must notify the applicant within 10 business days after the decision is made. The administering authority's notice to the applicant must state that they may apply for another type of environmental authority (mining activities) for the proposed activities.

There is no appeal against a decision to refuse an application for an environmental authority (prospecting). This is because the conditions of an environmental authority (prospecting) are fixed and can not be modified by the administering authority or the tribunal. Consequently, any application which is not capable of complying with the standard environmental conditions must be refused. This provision is part of the simplified, streamlined system for assessing and issuing environmental authorities (prospecting), which also includes provisions such as the deemed grant of the authority where the administering authority has failed to decide the application within the specified period. An applicant who is dissatisfied with a decision under this section may apply for a non-standard mining authority for the proposed activity (eg a mining lease). Any such application will provide the applicant with review and appeal rights.

PART 4—PROCESSING ENVIRONMENTAL AUTHORITY (MINING CLAIM) APPLICATIONS

Division 1—Preliminary

Operation of pt 4

Section 34FN states that this part provides for a process to assess applications for environmental authorities (mining claim).

Division 2—Decision to refuse or to allow to proceed

Administering authority may refuse application

Section 34FO states that the administering authority must consider an application for an environmental authority (mining claim) and either refuse the application or allow the application to proceed to the development of a draft environmental authority.

In making this decision, the administering authority must consider the standard criteria, the applicant's ability to comply with the relevant standard environmental conditions, any report about the applicant's suitability and the status of any application under the *Mineral Resources Act 1989* for each relevant mining tenement. The administering authority may also consider other matters.

The section also states that the administering authority must decide whether to refuse the application or allow it proceed under divisions 3 and 4 within the period prescribed by the regulation.

Notice of refusal

Section 34FP states that if the administering authority decides to refuse an application for an environmental authority (mining claim), it must notify the applicant within 10 business days and state the reason for the refusal. The notice must also state that the applicant may apply for another type of environmental authority for the proposed activities. The refusal decision is not appealable. If the applicant chooses to apply for a non-standard environmental authority (mining lease), review and appeal rights will apply.

Division 3—Draft environmental authority stage

Obligation to prepare draft environmental authority

Section 34FQ states that, if the administering authority does not decide under section 34FO to refuse an application for an environmental authority (mining claim) within the period stated in the regulation, it must give the applicant and the relevant Mining Registrar a draft environmental authority for the proposed activities.

The draft environmental authority must be in the approved form, include the standard environmental conditions set out in the relevant Code of Environmental Compliance and any proposed additional conditions for the authority and comply with the requirements of this division of the Act.

Additional conditions may be included

Section 34FR states that, at any time before the administering authority gives the draft environmental authority (mining claim) to the applicant, the applicant may request that the administering authority include an additional condition in the draft environmental authority.

The request that an additional condition be included must be made in the application or in the approved form and accompanied by any fee prescribed under a regulation. The request must be supported by enough information to allow the administering authority to decide whether to grant or refuse the request.

In deciding the conditions to include in an environmental authority (mining claim), the administering authority must comply with any relevant requirement in an Environmental Protection Policy and consider the standard criteria. The administering authority may also consider other matters it considers relevant.

The administering authority may only include an additional condition if it considers the condition to be necessary and desirable and is satisfied that, if the condition is included, the activity would still be a standard mining activity.

The administering authority may include an additional condition even if the applicant has not requested that the condition be included.

Division 4—Public notice, objection and decision stage

Mining lease process under pt 6, divs 6 to 8 applies

Section 34FS states that the public notice and objection processes for an environmental authority (mining claim) will be, with relevant changes, follow the process for an environmental authority (mining lease) described in part 6, divisions 6 to 8 of this Chapter.

These provisions, as they apply to mining claims, are summarised as follows:

- the administering authority prepares a draft environmental authority for the application setting out the relevant standard environmental conditions and any additional conditions which the administering authority proposes to include;
- the applicant publishes a public notice about the application for the environmental authority, which is combined with the public notice about the mining claim which is currently required under the *Mineral Resources Act 1989;*
- notification of the environmental authority will be included in the certificate of public notice for the application issued under sections 64B(2) (a) & (c) of the *Mineral Resources Act 1989;*
- for the purposes of section 34HA, the application notice is "given and published" if the requirements of section 64B(2) of the *Mineral Resources Act 1989* are met for the certificate of public notice;
- dissatisfied persons may object to the Land and Resources Tribunal;
- the applicant may not appeal because the conditions of an environmental authority (mining claim) will essentially be the standard environmental conditions applied through the simplified, streamlined approval system. An applicant who is dissatisfied with a decision may apply for an (appealable) non-standard mining authority for the proposed activity (eg a mining lease);
- the tribunal will hear any objections to the proposed environmental authority and to the mining claim application jointly or as close together as possible. The outcome of the tribunal hearing will be a direction to the Mining Registrar for the relevant mining district regarding the grant or refusal of the mining claim and a recommendation to the MRA Minister regarding the issue of the environmental authority;
- applications for environmental authorities (mining claim) to which no objections have been lodged will be granted subject to the conditions set out in the draft environmental authority.

PART 5—PROCESSING ENVIRONMENTAL AUTHORITY (EXPLORATION) AND ENVIRONMENTAL AUTHORITY (MINERAL DEVELOPMENT) APPLICATIONS

Division 1—Preliminary

Operation of pt 5

Section 34FT states that this part describes the process to assess an application for an environmental authority (exploration) or an environmental authority (mineral development).

Division 2—Standard applications

Application of div 2

Section 34FU states that this division applies to an application for an environmental authority (exploration) or an environmental authority (mineral development) if the application is for a standard authority.

Additional conditions may be imposed

Section 34FV states that, at any time before the administering authority gives the draft environmental authority to the applicant, the applicant may request that the administering authority include an additional condition in the draft environmental authority.

The request that an additional condition be included must be made in the application for environmental authority (exploration) or an environmental authority (mineral development), or in the approved form and accompanied by any fee prescribed under a regulation. The request must be accompanied by enough information to allow the authority to decide whether to impose the additional condition.

In considering the conditions to include in an environmental authority (exploration) or environmental authority (mineral development), the administering authority must comply with any relevant environmental protection policy requirement and consider the standard criteria.

The administering authority may only include an additional condition if it considers the condition to be necessary and desirable and is satisfied that, if the condition is included, the activity will still be a standard mining activity.

The administering authority may include an additional condition even if the applicant has not requested that the condition be included.

Deciding application

Section 34FW states that the administering authority must consider an application for an environmental authority (exploration) or environmental authority (mineral development) and decide either to grant or refuse the application and whether to impose any additional conditions.

The section also states that the administering authority must decide whether to grant or refuse the application within the period prescribed in a regulation.

In deciding whether to grant or refuse the application and whether to impose any additional conditions, the administering authority must consider several matters. They are the application documents, the standard criteria, the applicant's ability to comply with the relevant standard environmental conditions, any report about the applicant's suitability obtained for the application and the status of any application under the *Mineral Resources Act 1989* for each relevant tenement.

The administering authority may also consider other matters it considers relevant.

Consequence of failure to decide

Section 34FX states if an applicant submits a valid application for an environmental authority (exploration) or environmental authority (mineral development) and the administering authority has not decided whether to grant or refuse the application within the time specified in a regulation, the environmental authority is taken to have been granted. If an environmental

authority is taken to have been granted under this section and the applicant for the environmental authority requested that an additional condition be included in the authority, the additional condition requested is taken to have been included in the environmental authority.

However if, under section 34FG, the EPA Minister decides that the application is a non-standard application, this section does not apply.

Grant of application

Section 34FY states that, if a standard environmental authority (exploration) or a standard environmental authority (mineral development) is granted, the administering authority must impose as conditions of the authority, the standard environmental conditions set out in the relevant code of environmental compliance, together within any additional conditions. The administering authority must, within 10 business days of granting an environmental authority (exploration) or an environmental authority (mineral development), insert the environmental authority into the appropriate register and give a copy of the authority to the applicant.

The administering authority must insert the environmental authority in the appropriate register and give the applicant a copy of the environmental authority within 10 business days after the later of the following events—the making of the decision or the granting of each relevant mining tenement for the application.

Notice about refusal or condition decision

Section 34FZ if the administering authority decides to refuse an application for an environmental authority (exploration) or an environmental authority (mineral development) or to refuse an additional condition requested by the applicant or to impose an additional condition that was not requested by the applicant, the administering authority must notify the applicant within 10 business days of the decision being made.

However the administering authority is not required to give a notice under this section to the applicant if the administering authority decides to impose an additional condition which is substantially the same as an additional condition proposed by the applicant. For example, the condition may be reworded to improve clarity or the administering authority may correct minor grammatical or clerical errors in grammar.

The notice of refusal to the applicant must state that the applicant may apply for another environmental authority (mining activities) for the activity. As for other decisions regarding conditions of standard authorities, there is no right of appeal.

Division 3—Non-standard application

Subdivision 1—Preliminary

Application of div 3

Section 34GA states that this division applies to non-standard applications for an environmental authority (exploration) or an environmental authority (mineral development).

Subdivision 2—EIS stage

EIS process applies

Section 34GB states that, if an EIS has been required for the application, the EIS process set out in Chapter 2A must be followed. Chapter 2A details the process for the development of an EIS, including preparation of the terms or reference and the public notification and public submission stages. The section also states that the EIS process may proceed regardless of whether the applicant has submitted an environmental management plan for the application. However, if an EIS has been required for a project, the draft environmental authority cannot be prepared by the administering authority until the EIS process has been completed.

Subdivision 3—Environmental management document stage

Environmental management plan required

Section 34GC states that an environmental management plan must be submitted for all applications for a non-standard environmental authority (exploration) or an environmental authority (mineral development).

If an EIS has been required for the application, the plan may be submitted whether or not the EIS process has been completed. To clarify, the EM Plan may be submitted with the application for environmental authority, after the assessment level decision or during the EIS process.

Purpose of environmental management plan

Section 34GD explains the purpose of an environmental management plan. The purpose of an environmental management plan is to help the administering authority decide what conditions to include in an environmental authority (exploration) or an environmental authority (mineral development). The environmental management plan does this by proposing environmental protection commitments for the project.

Environmental management plan—content requirements

Section 34GE states the requirements for an environmental management plan for Chapter 2C. (Note that an environmental management plan under Chapter 2A is a different document.) The environmental management plan, together with the application, must contain enough information to allow the administering authority to decide whether to issue the environmental authority and, if so, what conditions to impose. The administering authority will publish guidelines for preparing an environmental management plan.

The environmental management plan must be in the approved form and describe the relevant mining tenements, the proposed mining activities, the land on which the mining activities are to be carried out and the environmental values which are likely to be affected by the mining activity.

The application must state the applicant's environmental protection commitments proposed to protect and enhance the environmental values under best practice environmental management. (Best practice environmental management is defined in Section 18 of the *Environmental Protection Act 1994*.)

An environmental protection policy or a regulation may prescribe additional matters which must be addressed in preparing an environmental management plan.

The applicant's environmental protection commitments must be stated in a way that allows them to be measured and to be audited. (For further information on audits refer to Part 11 of this Chapter).

The environmental protection commitments must state the potential adverse and beneficial impacts of the proposed activities on the environmental values. The environmental protection commitments must also contain environmental protection objectives and measurable indicators regarding the extent to which environmental values will be protected or enhanced

The environmental management plan must contain an action program explaining how the applicant intends to achieve the environmental protection commitments. The action program should address issues such as continuous improvement, environmental auditing, monitoring, reporting and staff training.

The environmental management plan must contain a rehabilitation program for land that will be disturbed during the mining activities. The rehabilitation program must also state the proposed amount of financial assurance to be considered appropriate by the applicant, if the environmental authority is granted, based on the rehabilitation program.

Amending environmental management plan

Section 34GF states that an applicant who has submitted an environmental management plan may amend the original plan by submitting an "EM plan amendment notice" before the assessment period under section 34GG(2) ends. The EM plan amendment notice must be submitted to the administering authority in writing and be accompanied by any fee prescribed by regulation. The submitted environmental management plan is taken to be the original plan, as amended from time to time by any environmental management plan amendment notice given for the original plan.

EM plan assessment report may be prepared

Section 34GG states that, if an applicant has submitted an environmental management plan, the administering authority may give the applicant a report on the plan ("an EM plan assessment report")within the period prescribed by regulation.

If an environmental impact statement has been prepared for a mining project, the administering authority may include the EM plan assessment report in the EIS assessment report for the mining project.

Requirements for EM plan assessment report

Section 34GH states the requirements on the administering authority in preparing an EM Plan assessment report. The administering authority must comply with any relevant EPP requirement and, subject to this, also consider the submitted environmental management plan, whether the plan complies with the requirements of section 34GE and the standard criteria. The administering authority may also consider other matters it considers relevant.

The EM plan assessment report is intended to provide the applicant with the opportunity to consider the report and, if necessary, amend the submitted environmental management plan and submit an EM plan amendment notice.

Subdivision 4—Decision stage

Deciding application

Section 34GI states that the administering authority must decide whether to grant or refuse the application, within a period prescribed in a regulation. The administering authority may, in granting the application, impose conditions on the environmental authority which it considers necessary or desirable. The administering authority must, in deciding to grant or refuse the application, comply with any relevant EPP requirement and consider the application documents, the standard criteria, the submitted environmental management plan, any report on the applicant's suitability and the status of any applications for the relevant mining tenements. The administering authority may also consider other matters it considers relevant.

Grant of application

Section 34GJ states that if a non-standard environmental authority (exploration) or a non-standard environmental authority (mineral development) is issued, the administering authority must, within 10 business days of deciding to grant the environmental authority or within 10 business days of the granting of each relevant mining tenement for the application (whichever is the later), insert the environmental authority into the appropriate register and give a copy to the applicant. The environmental authority must be in the approved form and contain all the conditions imposed on the environmental authority.

Information notice about refusal or condition decision

Section 34GK states that, if the administering authority decides to refuse an application for a non-standard environmental authority (exploration) or a non-standard environmental authority (mineral development) or to impose a condition which is not the same as, or substantially the same as, a condition agreed to by the applicant, the administering authority must give an information notice to the applicant within 10 business days. An information notice is a written notice about the decision, that states the decision, the reasons for the decision and the review or appeal details. The notice also provides the applicant with information about the review and appeal rights available to them if they are dissatisfied with the decision.

PART 6—PROCESSING ENVIRONMENTAL AUTHORITY (MINING LEASE) APPLICATIONS

Division 1—Preliminary

Operation of pt 6

Section 34GL states that Part 6 provides a process to assess applications for environmental authorities (mining lease).

Summary of pt 6 process

Section 34GM provides a summary of the main steps in the application process for environmental authorities (mining lease). This summary provides an outline of the divisions of part 6 and related stages of the application process for standard and non-standard mining leases.

Division 2—EIS stage for non-standard applications

Application of div 2

Section 34GN states that division 2 only applies to non-standard applications for environmental authorities (mining lease).

EIS process applies

Section 34GO states that if an EIS has been required for the application, the EIS process set out in Chapter 2A must be followed. The section also states that the EIS process may proceed regardless of whether the applicant has submitted an environmental management overview strategy (EMOS) for the application.

Division 3—Environmental management document stage for non-standard applications

Application of div 3

Section 34GP states that division 3 only applies to non-standard applications for environmental authorities (mining lease).

EMOS required

Section 34GQ states that an EMOS must be submitted for all applications for a non-standard environmental authority (mining lease).

If an EIS has been required for the application, the EMOS may be submitted whether or not the EIS process has been completed.

Purpose of EMOS

Section 34GR states that the purpose of an EMOS is to help the administering authority decide what conditions to include in an environmental authority (mining lease). The EMOS does this by proposing environmental protection commitments for the project.

EMOS—content requirements

Section 34GS describes what information must be included in an EMOS and the form in which the EMOS must be provided. The EMOS, together with the application, must contain enough information to allow the administering authority to decide whether to issue the environmental authority and, if so, what conditions to impose. The administering authority will publish guidelines for preparing an EMOS.

An EMOS must be in the approved form and describe the relevant mining leases, the proposed mining activities, the land on which the mining activities are to be carried out and the environmental values which are likely to be affected by the mining activity. An EPP or a regulation may prescribe additional matters which must be addressed in an EMOS. For example, the EPP (Air) prescribes ambient air quality goals, these goals could be used in assessing the environmental values of the receiving environment and how this relates to air emissions resulting from mining activities.

The application must state the applicant's environmental protection commitments proposed to protect and enhance the environmental values under best practice environmental management.

The applicant's environmental protection commitments must be stated in a way that allows them to be measured and to be audited (for further information on audits refer to Part 11 of this Chapter) and state the potential adverse and beneficial impacts of the proposed activities on the environmental values. They must also contain environmental protection objectives and measurable indicators regarding the extent to which environmental values will be protected or enhanced.

The EMOS must set out control strategies explaining how the applicant intends to achieve the environmental protection commitments. The control strategies should address issues such as continuous improvement, environmental auditing, monitoring, reporting and staff training.

Amending EMOS

Section 34GT states that, if an EMOS has been submitted for an application for an environmental authority (mining lease), the applicant may amend or replace the proposed EMOS at any time before the end of the assessment period by written notice stating the amendment. For a definition of the assessment period, refer to section 34GU below. The EMOS amendment notice must be accompanied by any fee prescribed under a regulation. The submitted EMOS is taken to be the original EMOS as amended from time to time by any EMOS amendment notice given for the original EMOS.

EMOS assessment report may be prepared

Section 34GU states that the administering authority may prepare an assessment report on a submitted EMOS (an "EMOS assessment report") and give a copy to the applicant. However, the administering authority may only give the EMOS assessment report to the applicant within "the assessment period" specified in the Regulation.

The EMOS assessment report may highlight deficiencies in the submitted EMOS and provide a critical assessment of the environmental protection commitments in the submitted EMOS. If the administering authority prepares an EIS assessment report for a mining project, it may include the EMOS assessment report in the EIS assessment report.

Requirements for EMOS assessment report

Section 34GV states the process which the administering authority must follow if it prepares an EMOS assessment report. It must comply with any relevant requirement in an EPP and must consider the standard criteria and whether the submitted EMOS satisfies the requirements for the content of an EMOS set out in section 34GS. The administering authority may also consider other matters it considers relevant.

Division 4—Decision to refuse or to allow to proceed

Administering authority may refuse application

Section 34GW sets out the matters the administering authority must consider in deciding whether to refuse an application for an environmental authority (mining lease). If the administering authority does not decide to refuse the application, the application proceeds under divisions 5 to 7.

The administering authority may only decide whether to refuse the application or to allow it to proceed within the period prescribed in the regulation ("the refusal period").

In making its decision, the administering authority must consider the application documents, the standard criteria, any report on the suitability of the applicant and the status of any application under the *Mineral Resources Act 1989* for a relevant mining tenement. The administering authority may also consider other relevant matters.

The administering authority may decide to refuse an application for a non-standard mining lease on the basis that the proposed mining activity poses an unacceptable risk of environmental harm.

If the administering authority decides to refuse a standard application, it must notify the applicant by written notice within 10 business days. The notice of refusal must state reasons for the refusal and that the applicant may apply for another environmental authority (mining activities) for the activity. There is no right of appeal if an application for a standard mining lease is refused. The applicant may not appeal because the conditions of a standard environmental authority (mining lease) will essentially be the standard environmental conditions applied through the simplified, streamlined approval system. An applicant who is dissatisfied with a decision may apply for an (appealable) non-standard mining authority for the proposed activity.

If the application is for a non-standard mining lease, the notice of refusal is an information notice and therefore the applicant may appeal the decision to the tribunal if dissatisfied.

Division 5—Draft environmental authority stag

Obligation to prepare draft environmental authority

Section 34GX applies if the administering authority does not decide within the refusal period to refuse an application for an environmental authority (mining lease).

Within 5 business days after the end of the refusal period, the administering authority must give the applicant, a draft environmental authority. However, if the applicant has made a request for additional conditions, the administering authority has 10 business days from the date of the request to issue the draft environmental authority.

If the applicant and the administering authority agree, the period in which the administering authority must issue the draft environmental authority may be extended.

The draft environmental authority must be in the approved form and include the proposed conditions for the environmental authority. In preparing the draft environmental authority, the administering authority must

comply with the requirements of this division. For example, the administering authority must comply with the requirements of section 34GZ when fixing the conditions to be included in the draft environmental authority.

Conditions—standard applications

Section 34GY only applies to applications for standard environmental authorities (mining leases).

The administering authority must either, include the relevant standard environmental conditions in the draft environmental authority, or identify the standard environmental conditions by reference to them instead of listing all of the conditions. The applicant may request that additional conditions be included in the draft authority.

If the applicant applies for an additional condition, the application must be made in the approved form and be supported by enough information to allow the administering authority to decide whether to include it. The application must be accompanied by the fee prescribed in the regulation.

In deciding whether to include the requested addition condition, the administering authority must comply with any relevant requirements in any environmental protection policy and consider the standard criteria. The administering authority may also consider any other matter it considers relevant.

The administering authority may only include an additional condition if it considers the condition necessary and desirable. It must also be satisfied that the relevant activity would still be a standard mining activity.

The administering authority may include an additional condition even if the applicant has not requested it.

Conditions—non-standard applications

Section 34GZ states the requirements on the administering authority in deciding the conditions to include in a draft environmental authority for a non-standard application. In fixing the proposed conditions for the draft, the administering authority must comply with any relevant EPP requirement and, subject to this, consider the standard criteria, the submitted EMOS, any

suitability report obtained for the application, any EMOS assessment report for the application, any EIS and any EIS assessment report for a project that includes a relevant mining activity. The administering authority may also consider any other matter it considers relevant.

Division 6—Public notice and objections stage for all applications

Public notice of application

Section 34HA states the process which an applicant must follow in giving public notice of an application for an environmental authority (mining lease) application. The application notice must be given and published simultaneously or together with and in the same way as, the certificate of public notice for the relevant mining lease application under the *Mineral Resources Act 1989* and in any other way prescribed under a regulation. However, the administering authority may decide an additional or substituted way to give or publish the application notice if it gives the applicant an information notice about the decision before the application is given.

This section is subject to section 34HE. Where the administering authority decides the applicant has not complied with the public notice requirements (outlined in sections 34HA and 34HB), the authority may allow the application to proceed, if it considered that substantial compliance with these requirements has been achieved.

Required content of application notice

Section 34HB states what information must be contained in the application notice. Subject to section 34HE, the objection period (ie. the period within which objections may be given) specified in the application notice must end on the last day for objections under the *Mineral Resources Act 1989* for the relevant mining tenement application.

Public access to application documents

Section 34HC requires the administering authority to keep a copy of the application documents available for public inspection at its head office during office business hours and to give any person a copy of the application or parts of the application in exchange for the appropriate fee. The fee will be set at the minimum level necessary to recover reasonable costs incurred by the administering authority, such as photocopying and postage.

Declaration of compliance

Section 34HD states the requirements on an applicant for a an environmental authority (mining lease) in giving a declaration of compliance with the public notice requirements. The applicant must, within 5 business days after the objection period starts, give the administering authority a statutory declaration declaring whether or not the applicant has complied with the notice requirements. The proponent is taken to have complied with the public notice requirements if the declaration is given under this section and the declaration states the proponent has complied with the requirements.

Substantial compliance may be accepted

Section 34HE gives the administering authority discretion to allow the EIS to proceed if the proponent does not fully comply with public notice requirements provided the administering authority is satisfied there has been substantial compliance with the requirements (ie there has been an adequate notification to affected parties and the public of the proposal and adequate opportunity to lodge an objection).

The section also states the process which the administering authority must follow if it decides the public notice requirements have not been substantially complied with. The stated substituted way to give or publish the application notice applies instead of the requirements for giving or publishing the notice under section 34HA.

The administering authority must also decide a new objection period for the application if the original period fixed under Section 34HB has commenced, or would commence, before the publication of the new notice. This is to ensure that people who become aware of the application as a result of the new public notice, have sufficient time in which to lodge objections.

The application appeal rights for this provision relate only to the administering authority's decision that the public notice requirements have not been complied with. The decision of the administering authority regarding the form of the new public notice and the new objection period is not appealable.

Right to make objection

Section 34HF states that any entity may make an objection to the administering authority about an application, the draft environmental authority for the application or a condition included in the draft. However, the applicant may not object to any condition of a standard environmental authority (mining lease), as these will essentially be the standard environmental conditions applied through the simplified, streamlined approval system. An applicant who is dissatisfied with a decision may apply for a non-standard mining authority for the proposed activity with a site specific assessment process and appeal rights.

Acceptance of objections

Section 34HG defines what is a properly made objection about an application. These are simple procedural requirements that do not involve any judgement of the merits of the objections. The administering authority may accept a written objection about an application, even if it is not a properly made objection.

The objections will be lodged with the Mining Registrar for the relevant Mining District, as the Registrar is also responsible under the *Mineral Resources Act 1989* for the acceptance of objections against the issue of the mining tenement. This will enable all objections to be heard by the Tribunal jointly, or as close together as practicable.

Amendment or withdrawal of objection

Section 34HH states that an objector may withdraw or amend their objection by giving a written notice in the approved form. If the objector wants to withdraw or amend their objection before the end of the objection period, the notice must be given to the administering authority. If the objection period has ended, the notice must be given to the tribunal.

Note that if all objections have been withdrawn by the end of the objection period, the application does not proceed to the tribunal and the process under chapter 2C part 6 division 7 subdivision 2 "Grant if no current objection at end of objection period or before objections decision" applies. This subdivision requires the administering authority to issue the environmental authority with conditions based on those contained in the draft environmental authority.

The Mining Registrar for the relevant mining district will be responsible for administering this section.

Division 7—Decision stage

Subdivision 1—Referral to tribunal if current objection

Referral to tribunal

Section 34HI requires that, if there is a current objection to the application when the objection period ends, the administering authority must, within 10 business days of the objection period ending, refer the application to the Land and Resources Tribunal for a decision. The Mining Registrar for the relevant mining district will be responsible for this in order to ensure that objections against the issue of the environmental authority are referred to the Tribunal together with all other objections including those relating to the issue of the mining tenement or native title matters. The referral must be made to the registrar of the tribunal and be made in the approved form and must attach a copy of the application documents and each current objection. The parties to the proceeding are the administering authority, the applicant, each objector and anyone else decided by the Tribunal. The administering authority must, within 10 business days after making the referral, give the applicant a copy of the notice and each current objection and give each objector a copy of the notice.

Objections decision hearing

Section 34HJ states that, after receiving the notice, the Tribunal must decide how it intends to hear the objections. The Tribunal must ensure that the hearing of the objection is as close as practicable to the hearing of any

objections under the *Mineral Resources Act 1989* regarding the relevant mining tenements. This section is subject to the *Land and Resources Tribunal Act 1999* part 4, divisions 1 and 2 that deal with the organisation and operation of the Tribunal.

Tribunal mediation of objections

Section 34HK states that any party to the proceedings may request that the Tribunal arrange mediation about the objection. The Tribunal may conduct the mediation itself or may appoint a person to act as a mediator. While the Tribunal is not constrained in choosing whoever they deem appropriate to conduct mediation, the mediator would generally be expected to be the relevant Mining Registrar, Department of Mines and Energy.

Nature of objections decision

Section 34HL states that the tribunal, after considering any current objections, must recommend to the MRA Minister whether the application should be granted. The Tribunal may recommend that the application be granted on basis of the draft environmental authority for the application or subject to conditions different to those in the draft environmental authority. The Tribunal must give a copy of the decision to the EPA Minister as soon as practicable after the decision is made.

Matters to be considered for objections decision

Section 34HM states the matters the Tribunal must consider in deciding whether to recommend the grant of the environmental authority and the conditions which should be imposed on the authority. These criteria are the same as that which the administering authority is required to consider in deciding whether to grant or refuse an application for an environmental authority.

Advice from MRA Minister about objections decision

Section 34HN states that the EPA Minister must seek advice from the MRA Minister about the Tribunal's recommendations. The EPA Minister may seek the advice in whatever manner at whatever time he or she

considers appropriate. Once the advice has been sought, the MRA Minister has 10 business days in which to provide the advice sought. However, this period may be extended by agreement between the Ministers. In providing the advice, the MRA Minister may seek advice from any entity.

If, for any reason, the requirements of this section are not complied with, the non compliance does not invalidate any of the following:

- a decision by the EPA Minister under section 34HO to grant or refuse an environmental authority;
- a decision by the EPA Minister under section 34HO to impose conditions on an environmental authority;
- the grant of an environmental authority by the administering authority under section 34HO.

The intention of the provision that the MRA Minister may seek advice regarding the proposed decision from any other entity is to permit the MRA Minister to seek advice from other Ministers in order to ensure that an integrated whole of government decision is reached.

EPA Minister's decision on application

Section 34HO describes the process the EPA Minister must follow in deciding whether:

- to grant the application on the basis of the draft environmental authority; or
- to grant the environmental authority, but on conditions decided by the Minister that are different to conditions in the draft; or
- to refuse the application.

In making the decision, the Minister must consider the objections decision by the Tribunal and any conditions recommended by the Coordinator-General under the *State Development and Public Works Organisation Act 1971*. However, the Minister is not bound by any condition in the objections decision from the Tribunal or recommended by the Coordinator-General.

The administering authority must give the applicant written notice of the Minister's decision, and the reasons for it with 10 days.

Grant of application

Section 34HP states that if the EPA Minister decides to grant the application, the administering authority must issue the environmental authority within 10 business days. The environmental authority must contain the conditions decided upon by the EPA Minister. The administering authority must, within 10 business days of deciding to grant the environmental authority, or within 10 business days of the granting of each relevant mining tenement for the application, (whichever is the later) insert the environmental authority into the appropriate register and give a copy to the applicant.

Subdivision 2—Grant if no current objection at end of objection period or before objections decision

Application of sdiv 2

Section 34HQ states that this subdivision applies if there are no current objections at the end of the objection period or if any objections which were current at the end of the objection period were withdrawn before the Tribunal made its decision.

Grant of application on basis of draft environmental authority

Section 34HR states that if the circumstances described in section 34HQ apply, the administering authority must, within 10 business days, issue the environmental authority subject to the conditions described in the draft environmental authority for the application or conditions which are substantially the same.

The ability of the administering authority to make limited changes to the draft environmental authority is intended to allow for minor corrections of a technical or editorial nature and also to take into account cases where changes to the project have been proposed after the administering authority prepared the draft environmental authority. For example, changes may be required to incorporate additional conditions agreed between the applicant and the native title parties for the land which is the subject of the proposed mining tenement.

The administering authority must, within 10 business days of deciding to grant the environmental authority, or within 10 business days of the granting of each relevant mining tenement for the application, (whichever is the later) insert the environmental authority into the appropriate register and give a copy to the applicant.

Division 8—Miscellaneous provisions

Withdrawing an application

Section 34HS states that an application may be withdrawn at any time. If there is a current objection at the time of the withdrawal, the applicant must give written notice of the withdrawal to each objector. If an application is withdrawn, the tribunal's role in relation to the application ends and the tribunal is not required to take any further action in relation to the application.

Certain objections apply for later applications

Section 34HT states that, if an application is withdrawn and a substantially similar application is submitted within one year of the withdrawal, any objection against the withdrawn application which was current at the time of the withdrawal, will be treated as an objection against the new application.

Effects of noncompliance with application process

Section 34HU states what happens if the applicant fails to comply with any of the application requirements or fails to comply with a requirement under a relevant process under this part for assessing the application, other than a requirement to which section 34HE (ie. substantial compliance may be accepted) applies or fails to proceed to the next step in the process when they are entitled to do so. If any of these events occur, the application is suspended and the administering authority, the tribunal and the Ministers are not required to take any further action to process the application until the applicant takes the necessary action. If the application remains suspended for a year (or a longer period agreed between the applicant and the administering authority), the application lapses.

PART 7—PLAN OF OPERATIONS FOR ENVIRONMENTAL AUTHORITY (MINING LEASE)

Application of pt 7

Section 34HV states that part 7 applies to environmental authorities (mining lease).

Plan of operations required before acting under relevant mining lease

Section 34HW requires the holder of an environmental authority (mining lease) to submit a plan of operations for all mining activities proposed on the lease at least 28 days before commencing the activities, unless the administering authority agrees in writing to a lesser period. The plan of operations must comply with the content requirements described in section 34HX.

The holder of the environmental authority must ensure that all activities carried out on the mining lease are consistent with the submitted plan of operations. The manner, location, timing and scale of each activity must be conducted as described in the plan of operations.

A maximum penalty of 100 penalty units applies.

Content requirements

Section 34HX describes the content required for a plan of operations. The plan of operations must be accompanied by an audit statement and must be for a specified term between one and five years. This section also states the requirements for the audit statement to accompany the plan of operations.

Amending or replacing plan

Section 34HY describes the process for amending or replacing a plan of operations before the period of the plan ends.

Environmental authority overrides plan

Section 34HZ states that if there is any inconsistency between the conditions of the environmental authority to which a mining lease relates and the relevant plan of operations, the conditions prevail to the extent of any inconsistency with the plan.

If the holder of an environmental authority (mining lease) becomes aware of an inconsistency between the conditions of the environmental authority and a plan of operations for a mining lease covered by the environmental authority, they must amend the plan of operations to remove the inconsistency within 28 days. A maximum penalty of 100 penalty units applies.

PART 8—AMENDMENT OF AUTHORITY BY APPLICATION

Division I—Preliminary

Exclusion from amendment under pt 8

Section 34IA limits the application of this Part. An environmental authority (prospecting permit) cannot be amended under this part. An environmental condition regarding a financial assurance can not be amended under this part. This part does not apply to an application for partial surrender of an environmental authority under section 34JG.

Division 2—General provisions for amendment applications

Who may apply

Section 34IB states that the holder of an environmental authority (mining activities) may apply for an amendment to the authority at any time.

Additional conditions may be sought for standard authorities

Section 34IC states that the holder of a standard environmental authority may apply at any time to have additional conditions included in the environmental authority. A prospecting permit can not be amended.

Requirements for application

Section 34ID states the requirements for a valid application for an amendment of an environmental authority (mining activities).

Division 3—Processing amendment applications for standard authorities

Application of div 3

Section 34IE states that division 3 applies to applications for amendments to standard environmental authorities.

Deciding application

Section 34IF states the criteria that the administering authority must follow consider in deciding whether to grant an application for an amendment to a standard environmental authority.

(This section allows the administering authority to amend a standard environmental authority to reflect a change in the standard conditions if requested to do so by the authority holder. However, section 219AB states that, where standard environmental conditions are amended, the previous version of the standard environmental conditions continues to apply for existing projects which were operating under the standard environmental conditions immediately before the amendment. Therefore, any change to the conditions of an existing authority to reflect a change to the standard environmental conditions will be initiated by the authority holder.)

The administering authority, in deciding whether a proposed amendment is necessary or desirable, must consider the standard criteria, the applicant's ability to comply with the relevant standard environmental conditions, any suitability report about the applicant prepared for the application and the status of any application under the *Mineral Resources Act 1989* that relates

to each relevant mining tenement. (An application under the *Mineral Resources Act 1989* would be relevant where, for example, the applicant was applying to amend the environmental authority to include a proposed new tenement.)

The administering authority may refuse an application to amend an environmental authority under this section on the grounds that it would be more appropriate to seek a replacement of the environmental authority. This would occur, for example, where the administering authority believed that the environmental authority would no longer be a standard environmental authority if the amendment were approved. An applicant who is dissatisfied with a decision under this section may apply for a non-standard mining authority for the proposed activity. Any such application will provide the applicant with review and appeal rights.

Consequence of failure to decide

Section 34IG states that, if the administering authority fails to decide whether to grant an application to amend a standard environmental authority within 10 business days, the application is deemed to be granted. Note, the application is taken to be granted 11 business days after it is made because the period in which the administering authority may refuse to grant the application does not end until the close of business on the tenth business day after the lodgement of the application.

Steps after making decision

Section 34IH states the process which the administering authority must follow after it has decided whether to grant the application for the amendment. In deciding an application, the administering authority may only grant the application if it considers the amendment necessary or desirable and, if the amendment were to be made, each relevant mining activity would still be a standard mining activity. The administering authority is required to consider the standard criteria and the applicant's ability to comply with the relevant standard environmental conditions in making the decision.

There is no appeal against a decision to refuse an application to amend a standard environmental authority (for reasons described earlier in relation to applications for new standard authorities). An applicant who is dissatisfied

with a decision under this section may apply for a non-standard mining authority for the proposed activity which was the subject of the amendment application. Any such application will provide the applicant with review and appeal rights.

Division 4—Processing other amendment applications

Subdivision 1—Preliminary

Application of div 4

Section 34II states that division 4 applies to applications to amend non-standard environmental authorities (mining activities).

Subdivision 2—Assessment level decision

Assessment level and EIS decisions for application

Section 34IJ states when an application to amend a non-standard environmental authority (mining activities) is received, the administering authority must decide whether, if the amendment applied for were to be made, the level of environmental harm caused by the relevant mining activity is likely to be significantly increased—the assessment level decision. If so, the administering authority must decide whether an EIS is required.

In making the decision, the administering authority must consider the standard criteria. The standard criteria are defined in schedule 4 of the Act and are published criteria that are widely available.

If the administering authority decides an EIS is required, the amendment application must be refused and the applicant is given a written notice of the decision and the reasons for it.

The decision by the administering authority to refuse the application does not stop the applicant from applying for another environmental authority (mining activities) the subject of the amendment application.

Ministerial decision about assessment level and EIS Decisions

Section 34IK states that the EPA Minister may make the decision referred to in section 34IJ despite any decision of the administering authority under that section. instead of the administering authority. The EPA Minister may reverse a decision already made by the administering authority under section 34IJ. If the EPA Minister's decision is that an EIS is not required, the EPA Minister may also decide at what point in the process under section 34IO, the processing of the application should proceed.

Automatic refusal if EIS required

Section 34IL states that, if a decision is made under section 34IJ or section 34IK that an EIS is required for a proposed amendment, the administering authority must give a notice to the applicant stating that the application for amendment has been refused but that the applicant may apply for a new environmental authority (mining activities) for the proposed activities.

If the applicant wishes to proceed with the proposed changes to the activities, they must apply for a new environmental authority and prepare an EIS for the proposed activities by following the application process set out in chapter 2C Parts 6 & 7 and the EIS process described in chapter 2A. This process is intended to ensure that changes to existing mining projects with the potential for significant additional environmental impacts are subject to the same degree of environmental assessment and public involvement as equivalent new mining projects

However this section does not apply to a decision of the administering authority under section 34IJ if the EPA Minister decides under section 34IK that an EIS is not required.

Notice of assessment level decision

Section 34IM states that, if the EIS decision has been made in relation to an application and the decision is that an EIS is not required, the administering authority must notify the applicant of the decision.

Subdivision 3—Process if decision is significant increase in environmental harm likely and EIS not required

Application of sdiv 3

Section 34IN states that subdivision 3 applies to an application to amend an environmental authority (mining activities), if it has been decided that the level of environmental harm is likely to be significantly increased if the amendment is granted and it has also been decided that an EIS is not required.

Relevant application process applies

Section 34IO states that the relevant application process for the particular type of environmental authority (mining activity) will apply to the application to amend the environmental authority with any necessary changes. For example, an application to amend an environmental authority (mining lease) under this subdivision will be required to follow the process set out in part 6, divisions 3 to 8.

Refusal on ground that replacement authority needed

Section 34IP provides that the administering authority may refuse an amendment application on the grounds that it would be more appropriate for the applicant to apply for a new environmental authority. This may be the case where the amendment, or the incremental effect of repeated amendment over time, changes the nature of the project to the extent that the EPA considers the overall environmental authority no longer adequately deals with the environmental impacts of the project or that it would be appropriate for new public notification of the project and its conditions. The authority may also decide a new application is appropriate when an amendment to a transitional authority is sought, so as to ensure clear, comprehensive and up to date conditions are determined for the project.

Previous environmental management document may be amended

Section 34IQ states that the applicant for an amendment may submit an amended copy of their existing environmental management documents (under section 34IO) to satisfy any requirement in the application process for the submission of an environmental planning document. If an amended version is submitted, it is taken to be the submitted environment management document for any later amendment application for the environmental authority.

Public notice of application

Section 34IR states the process which the holder of an environmental authority (mining lease) must follow in giving notice of a proposed significant amendment. The applicant is required to give the application notice to each affected person for each relevant mining lease and publish the notice. An affected person is an entity who would be an affected person if the amendment application were a project and the operational land for the project is each relevant mining lease for the environmental authority. The administering authority may also decide another way of giving notice of the amendments only if it gives the applicant an information notice about the decision before the notice is published.

Objection period

Section 34IS states the public notification requirements in part 6, division 6, apply to an amendment application for an environmental authority if the administering authority decides the amendment is likely to significantly increase the level of environmental harm caused by the relevant mining activity if the amendment is granted.

Section 34HB sets the objection period for the application for an environmental authority and applies for an application to amend the environmental authority. In the original application process, the objection period must end on the last objection day after the certificate of public notice has been issued under the *Mineral Resources Act 1989.*

This is not relevant for amendment applications so the administering authority sets the objection period for an amendment application by written notice to the applicant.

The period set by the administering authority must be at least 20 business days and must end at least 20 business days after the publication of the application notice. This is consistent with the objection period following issue of the certificate of public notice for mining leases.

Subdivision 4—Process if decision is significant environmental harm increase unlikely

Application of sdiv 4

S*ection 34IT* states that subdivision 4 applies if the assessment level decision for the amendment application is that the level of environmental harm is not likely to be increased to a significant extent.

Deciding application

Section 34IU states that the administering authority must decide to either grant or refuse the application within 20 business days. In making its decision, the administering authority must comply with any relevant environmental protection policy requirement and must also (subject to complying with any relevant environmental protection policy requirement) consider the standard criteria.

However, if a transfer application has been made for the environmental authority, the amendment application must not be granted before the transfer application is granted or if the transfer application is refused.

Subsection (3) confirms that the administering authority is not limited to the matters which it may consider.

Steps after making decision

Section 34IV states that where the administering authority decides to grant the application, it must, within 10 business days after the decision is made, amend the environmental authority to give effect to the amendment, record particulars of the amendment in the appropriate register and give the applicant a copy of the amended environmental authority.

Where the administering authority decides to refuse the application, it must, within 10 business days after the decision is made, give the applicant an information notice about the decision.

PART 9—TRANSFER OF AUTHORITY

Division 1—Transfer applications

Transfer only by approval

Section 34IW states how an environmental authority (mining activities) may be transferred to a person who is not already a holder. An application for the transfer must be made under division 1 and the administering authority must approve the transfer.

The process for transferring an environmental authority mining is described below in sections 34IX to 34JD. The main elements of the process are as follows:

- a valid application for the transfer must be made (refer section 34IX);
- the administering authority may require an audit statement (refer section 34IY);
- the administering authority must consider the matters set out in section 34IZ;
- if the application is granted the administering authority must amend the environmental authority accordingly and give a notice to that effect to the applicant (refer section 34JB).

Where the environmental authority is jointly held, the environmental authority may be amended under part 8 or 12 to remove one or more of the holders from the authority, provided at least one holder remains.

Subsection (3) states that an environmental authority (prospecting) cannot be transferred.

Requirements for transfer application

Section 34IX sets out the requirements for a transfer application. It must be made, in the approved form, to the administering authority jointly by the holder of the environmental authority and the person to whom it is proposed the authority be transferred. It must be supported with enough information to allow the administering authority to decide the application and it must be accompanied by any fee prescribed in a regulation.

The applicants may, together with the transfer application, make an amendment application for the environmental authority.

Subsection (3) states that Part 8 applies, with any necessary changes, to the amendment application as if a reference to the environmental authority holder were a reference to the applicant. This means that the amendment sought in association with the transfer follows the same process for assessment and decision as do other amendment applications, with the tests normally applied to the holder of the environmental authority applied to the proposed transferee.

Under subsection (4), the amendment application must not be granted either prior to the transfer application, or if the transfer application is refused.

Audit statement may be required

Section 34IY enables the administering authority to require the environmental authority holder to provide an audit statement for the relevant environmental authority. This requirement must be made by the administering authority within 20 business days after the transfer application is made.

Under subsection (2), the audit statement must be made by or for the environmental authority holder and it must state the extent to which activities carried out under each relevant mining tenement have complied with the conditions of the environmental authority.

Subdivision 2—Processing transfer applications

Deciding application

Section 34IZ sets out the time limits within which the administering authority must decide whether to approve or refuse the transfer application. Where an audit statement has been requested, the time limit is 20 business days after the giving of the audit statement. Where there has been no requirement for an audit statement, the time limit is 3 months after the application is received by the administering authority. These periods are consistent with the provisions under the *Mineral Resources Act 1989* for the assignment of a mining lease.

In deciding the application, the administering authority is required to consider the criteria in subsection (2).

Refusal on ground that amendment required

Section 34JA provides for the administering authority to refuse the transfer application if an application has not been made under section 34IX to amend the environmental authority and the authority considers that, if the transfer application were granted, amendment would be necessary or desirable on any of the grounds mentioned in section 34KD.

For example, if a mining project over a number of leases is being split up and one of the leases is being transferred to a new holder. The existing environmental authority would have to be amended to provide separate environment authorities relevant to the newly separated projects.

Steps after making decision

Section 34JB applies where the administering authority decides to approve the transfer. The administering authority must amend the relevant environmental authority to give effect to the transfer within 10 business days after the decision is made, record particulars of the transfer in the appropriate register and give a copy of the amended environmental authority to the applicant within 10 business days after the later of the following events:

- the making of the decision;
- the transferee becomes the holder of each mining tenement for the environmental authority; or

- where a person other than the transferee holds a relevant mining tenement, when that person ceases to be a holder of the tenement (this last is intended to ensure that every holder of a relevant tenure and only those, hold the environmental authority).

Subsection (2) applies where the administering authority decides to refuse a transfer. Where this is the case, it must, within 10 business days after the decision is made, give the applicant an information notice about the decision.

Effect of plan of operations and environmental management documents after transfer

Section 34JC states that, when an environmental authority (mining activities) is transferred, the existing environmental management documents and any submitted plan of operations for an environmental authority (mining activities) continue to apply to the holder of the transferred authority to the extent that they are relevant.

Notice to owners of transfer

Section 34JD applies where the transferee is given a copy of the amended environmental authority under section 34JB. The transferee must, within 10 business days, give each owner of the land to which the environmental authority relates, written notice of the transfer of the authority to the transferee.

A maximum penalty of 10 penalty units applies.

PART 10—SURRENDER OF AUTHORITY

Division 1—General Provisions for surrender

Prospecting permit can not be surrendered

Section 34JE states this part does not apply to an environmental authority (prospecting). An environmental authority (prospecting) does not need to be surrendered—the authority will terminate when the associated prospecting permit terminates.

Surrender only by approval

Section 34JF states that an environmental authority (mining activities) may only be surrendered if a surrender application is made to the administering authority and the administering authority approves the surrender. This is intended to ensure that an environmental authority holder's responsibility to meet the conditions of the authority and the commitments made by the authority holder, particularly in relation to rehabilitation, cannot be evaded.

A holder of an environmental authority (mining activities) must make a surrender application if required under section 34JH or may make an application at any other time.

Surrender may be partial

Section 34JG enables the administering authority to approve the surrender of part of an environmental authority (mining activities).

The administering authority may refuse the application, if the applicant has not made an amendment application for the part of the environmental authority (mining activities) that is not to be surrendered and it is appropriate to amend the remaining part, for example to remove conditions applying to an area or an activity that is not part of the continuing project..

When surrender application required

Section 34JH states when a mining tenement is cancelled, a surrender application for the environmental authority, or part of the environmental authority, that relates to the tenement, must be made within 30 days of the cancellation.

Under subsection (3), where there is no cancellation, the surrender application must be made within a set period before the tenement ends for any reason other than cancellation. The relevant period will be prescribed under a regulation (and will be different for different types of environmental authority). A surrender application is not required if, the relevant mining tenement is, before the prescribed period starts, renewed or continued in force under the *Mineral Resources Act 1989.*

A surrender application is not required for an environmental authority that is replaced by a new environmental authority, nor when a transitional authority with no relevant tenement is being consolidated with an environmental authority for the relevant tenement.

Notice by administering authority to make surrender application

Section 34JI provides for the administering authority to give a written notice (a "surrender notice"), to the holder of an environmental authority who has not complied with the surrender application provisions of section 34JH. The notice requires the holder to make a surrender application for the environmental authority within a stated period of at least 10 business days.

Failure to comply with surrender notice

Section 34JJ provides a penalty for failing to comply with a surrender notice unless the person has a reasonable excuse. A maximum penalty of 100 penalty units applies.

Division 2—Surrender applications

Subdivision 1—Requirements for surrender applications

Requirements

Section 34JK states the requirements for a surrender application. A surrender application must be in the approved form and supported by enough information to allow the administering authority to decide the application and be accompanied by a final rehabilitation report and an audit statement for the environmental authority and any fee which may be prescribed under a regulation.

The audit statement must be made for or by the environmental authority holder and describe the extent to which the conditions of the environmental authority, particularly in relation to rehabilitation, have been complied with and the extent to which the final rehabilitation report is accurate and complete.

Subdivision 2—Final Rehabilitation Reports

Content requirements for report

Section 34JL sets out the content requirements for a final rehabilitation report.

Amending report

Section 34JM allows a person who has submitted a final rehabilitation report to amend it at any time before the administering authority decides the relevant surrender application, provided the administering authority is given a written notice stating the amendment. This is called a "FRR amendment notice".

The submitted final rehabilitation report is taken to be the original report, as amended from time to time by any FRR amendment notice given for the original report.

FRR assessment report may be given

Section 34JN enables the administering authority to give the person who submitted a final rehabilitation report an assessment report, called an "FRR assessment report", about the final rehabilitation report. This must be given within the period prescribed under a regulation.

Subdivision 3—Processing Surrender Applications

Deciding application

Section 34JO requires the administering authority to consider each surrender application and decide whether to approve or refuse the application within the period prescribed under a regulation.

Criteria for decision

Section 34JP sets out the criteria which the administering authority must consider when deciding a surrender application. The administering authority must comply with any relevant EPP requirement. It must also consider the standard criteria, the final rehabilitation report for the environmental authority, the audit statement for the environmental authority, or the part of the environmental authority which is the subject of the application, any FRR assessment report and any other matter prescribed under an environmental protection policy or a regulation.

It is intended that the holder of an environmental authority mining activities be responsible for rehabilitating the land affected by any mining activities either so as to restore the land to the same condition it was before mining or to another standard acceptable to the State. It is intended to prevent any liability (other than expressly agreed) being transferred to the State or to another landholder. In general, the holder of the environmental authority will not be permitted to surrender the authority unless these objectives are met.

The administering authority may only grant the surrender application if:—

1. it is satisfied that the conditions of the environmental authority, have been complied with (ie where the authority conditions include comprehensive and specific standards and indicators for what constitutes satisfactory rehabilitation and the these are achieved); or

2. it is satisfied that the land on which each relevant mining activity has been carried out has been satisfactorily rehabilitated (the authority may be satisfied that the rehabilitation is satisfactory even if all the conditions of the authority have not been fully achieved or if the conditions in the authority were not sufficiently clear to determine that they had been fully complied with); or

3. it has approved an environmental management program and is satisfied the land will be satisfactorily rehabilitated under the program (ie where the authority is not satisfied of 1 or 2 above, it may accept surrender if it is satisfied rehabilitation will be adequately completed under an environmental management program); or

4. for land that is contaminated for the purposes of part 9B of the Act, if (i) a suitability statement has been given for the land and the land is suitable for its intended use or (ii) a site management plan has been approved for the land.

Other circumstances where the authority may accept surrender may be prescribed by regulation.

Steps after making decision

Section 34JQ states what the administering authority must do, within 10 business days of deciding a surrender application.

Where the decision is to approve the application, the administering authority must record particulars of the surrender in the appropriate register and give the applicant written notice of the decision.

If the decision is to refuse the application, the administering authority must give the applicant an information notice about the decision.

PART 11—ENVIRONMENTAL AUDITS FOR MINING ACTIVITIES

Division 1—Audit requirements

Administering authority may require environmental audit

Section 34JR enables the administering authority to require an environmental authority holder to conduct or commission an environmental audit about a stated matter concerning a relevant mining activity and give the administering authority an environmental audit report. The administering authority may only require an audit if it is satisfied, on reasonable grounds, that the audit is necessary or desirable.

Subsection (3) requires the audit notice to state the following:

- the holder's name;
- the environmental authority (mining activities);
- the matter for which the environmental audit is required;

- that the holder must, within a stated reasonable period, conduct or commission the environmental audit and give the administering authority an environmental audit report about the audit.

The audit requirement and the time allowed for its completion are subject to appeal. Subsection (4) requires the audit notice to be accompanied by, or include an information notice about the decision to give notice and to fix the stated period.

Failure to comply with audit notice

Section 34JS sets the maximum penalty for a person who fails to comply with an audit notice as 300 penalty units, unless the person has a reasonable excuse.

Costs of complying with audit notice

Section 34JT requires that any person to whom an audit notice has been given must pay any costs incurred in complying with the notice (all costs incurred in conducting or commissioning the audit and providing the audit report, including, for example, expert scientific advice, are the responsibility of the authority holder).

Division 2—Audits by administering authority

Administering authority may conduct environmental audit

Section 34JU entitles the administering authority to conduct or commission an audit about a stated matter concerning an environmental authority (mining activities) itself, or to evaluate and prepare an environmental audit report about an audit conducted by another party.

However, the administering authority may only do this if it is reasonably satisfied the audit is necessary or desirable. It must also give the holder an information notice about the decision if it makes a decision under subsection (1).

The administering authority must also, within 10 business days after preparing an environmental audit report, give the environmental authority holder a copy of it.

Authority's costs of environmental audit or report

Section 34JV provides for the administering authority to recover any costs it incurs in conducting an environmental audit or preparing an environmental audit report. It requires the holder of the relevant environmental authority (mining activities) to pay the amount of the costs if asked by the administering authority and provided that the costs were properly and reasonably incurred. The administering authority may recover the amount as a debt.

Division 3—Auditors and conduct of environmental audits

Appointment of auditors

Section 34JW provides for the administering authority to appoint an individual as an auditor. However, the administering authority may only do so if it is satisfied that the individual has the qualifications prescribed under a regulation.

Appointment conditions and term

Section 34JX outlines the conditions and terms of the appointment of an auditor. The appointment is subject to any conditions stated in the auditor's instrument of appointment.

The conditions may, for example, limit the environmental audits the auditor may conduct to a stated type of environmental audit.

The auditor must comply with the conditions unless a reasonable excuse for not doing so can be provided. If the instrument provides for a term of appointment, the auditor ceases to hold office at the end of the term. A maximum penalty of 100 penalty units applies.

Who may conduct an environmental audit

Section 34JY states the limitations upon who may conduct an environmental audit. The audit may only be conducted by either the administering authority or an auditor whose instrument of appointment allows it. A person who has been disqualified or prohibited from

conducting an environmental audit by regulation must not do so. A maximum penalty of 100 penalty units applies.

Impersonation of auditor

Section 34JZ states that a person must not pretend to be an auditor and a maximum penalty of 100 penalty units applies.

Division 4—Miscellaneous provisions

False or misleading information about environmental audits

Section 34KA requires that a person must not state or give anything to an auditor who is conducting an environmental audit that the person knows is false or misleading. A maximum penalty of 165 penalty units applies.

An auditor must not make an environmental audit report that the auditor knows is false or misleading. A maximum penalty of 165 penalty units applies.

PART 12—AMENDMENT, CANCELLATION OR SUSPENSION BY ADMINISTERING AUTHORITY

Division 1—Conditions for amendment, cancellation or suspension

Subdivision 1—Amendments

Corrections

Section 34KB allows the administering authority to amend or correct a clerical or formal error contained in an environmental authority (mining activities), provided the amendment does not adversely affect the interests of the environmental authority holder or anyone else and written notice of the amendment has been given to the holder.

Other amendments—standard authorities

Section 34KC allows the administering authority to amend a standard environmental authority (mining activities) at any time if, it considers the amendment necessary or desirable and the procedure under division 2 is followed, or the holder has agreed in writing to the amendment.

An amendment cannot be made to a standard authority that would result in the authority no longer satisfying the requirements for a standard authority.

In making the decision about whether to amend, the administering authority must consider the standard criteria (for a definition of the standard criteria refer to schedule 4 of the *Environmental Protection Act 1994)*, the applicant's ability to comply with the relevant standard environmental conditions and any suitability report obtained for the application.

Other amendments—non-standard authorities

Section 34KD states that the administering authority may amend a non-standard environmental authority (mining activities) at any time if it considers the amendment necessary or desirable and the procedure under division 2 is followed or the holder has agreed in writing to the amendment.

The grounds on which the administering authority may amend a non-standard environmental authority (mining activities) are listed.

Subdivision 2—Cancellation or suspension

Conditions

Section 34KE outlines when the administering authority may cancel or suspend an environmental authority (mining activities). This can be done if a replacement environmental authority is issued for the environmental authority or an event mentioned in subsection (2) has happened and the procedure under division 2, is followed.

Division 2—Procedure for amendment without agreement or for cancellation or suspension

Application of div 2

Section 34KF states that this division applies where the administering authority decides to amend the environmental authority (mining activities), other than to make a correction, or with the written agreement of the environmental authority holder, or decides to cancel or suspend an environmental authority.

Notice of proposed action

Section 34KG requires that, if the administering authority, intends to amend the environmental authority other than to make a correction or with written agreement of the environmental authority holder, the administering authority must give the environmental authority holder a written notice.

The stated period under subsection (1)(f), must end at least 20 business days after the holder is given the proposed action notice.

Subsection (3) allows for the fixing of the proposed suspension period under subsection (1)(e), by reference to a stated event

Considering representations

Section 34KH requires the administering authority to consider any representation made by the environmental authority holder, within the period stated in the notice of proposed action.

Decision on proposed action

Section 34KI sets out what the administering authority may do if, after having considered any written representation made within the period stated in the notice under section 34KH, it still considers a ground exists to take the proposed action. The administering authority may:

- if the proposed action is to amend the environmental authority in a stated way, the administering authority may make the amendment; or

- if the proposed action is to suspend the environmental authority for a stated period, it may suspend the environmental authority, provided it is for no longer than the proposed suspension period; or
- if the proposed action is to cancel the environmental authority, it may either cancel the environmental authority or suspend it for a fixed period.

If the administering authority decides to take the proposed action under subsection (1), this is called the 'proposed action decision'.

Where the administering authority decides, at any time, not to take the proposed action, it must promptly give the holder written notice of the decision.

Notice of proposed action decision

Section 34KJ requires that, within 10 business days after making the proposed action decision, the administering authority must give the authority holder an information notice stating the decision and the reasons for it. However, if the proposed action is to amend a standard environmental authority a written notice is given instead of an information notice. The decision is not appealable on the merits for the reasons described earlier for standard authorities.

The section also sets the timeframes within which the decision will take effect. This is on the later of two dates, either the day the notice is given to the holder or a later day of effect which is stated in the notice.

However, the date on which the decision will take effect may be altered if the decision was to suspend or cancel the authority because of the conviction of the holder for an offence. In this case the cancellation or suspension does not take effect until the end of the period to appeal against the conviction, or if there is an appeal against the conviction, when the appeal is finally decided or is otherwise ended.

Where the conviction is quashed on appeal, the cancellation or suspension will have no effect.

Division 3—Steps after making decision

Steps for corrections

Section 34KK applies if the administering authority makes an amendment under section 34KB (amending an environmental authority to correct a clerical or formal error). It requires that, within 10 business days after giving notice of the correction, the administering authority must amend the environmental authority to give effect to the amendment and record particulars of the amendment in the appropriate register.

Steps for amendment by agreement

Section 34KL requires that, where the administering authority has amended an environmental authority with the agreement of the holder, the administering authority must, within 10 business days, amend the environmental authority to give effect to the amendment, record particulars of the amendment in the appropriate register and give the holder a copy of the amended environmental authority.

Steps for amendment without agreement or for cancellation or suspension

Section 34KM requires that where the administering authority has decided to take an action, it must, as soon as practicable after making the decision, take the action.

If the proposed action is to amend the environmental authority, the administering authority must give the environmental authority holder a copy of the amended environmental authority and record particulars of the action in the appropriate register.

If the proposed action is suspension of the environmental authority, the particulars recorded in the register must state the start and finish of the suspension period.

If the proposed action is to amend the environmental authority, the administering authority must give the holder a copy of the amended environmental authority as soon as practicable.

PART 13—MISCELLANEOUS PROVISIONS

Division 1—Advice from MRA chief executive

Requirement to seek advice from MRA chief executive

Section 34KN requires that, before making certain decisions or actions, the administering authority must seek advice from the chief executive of the MRA department. The object is to facilitate the integration of decisions under the *Mineral Resources Act 1989* and the *Environmental Protection Act 1994* and to allow consideration of a whole of Government perspective before taking actions which may have an adverse effect on a mining project.

The decisions are:

- any decision refusing a surrender or transfer application, unless a reason for the refusal is that a relevant mining tenement has not been assigned or surrendered under the *Mineral Resources Act 1989*; and
- any proposed action decision (to amend, suspend or cancel an environmental authority—see section 34KG), if the holder of the relevant environmental authority has not agreed in writing to the decision; and
- any other decision about a non-standard application or a non-standard environmental authority (mining activities), where the applicant or authority holder has not agreed to the decision in writing; and
- to give a draft environmental authority (mining lease) for a non-standard application.

The administering authority may seek the advice in the way it considers appropriate and the advice must be given within the time required under this chapter for the administering authority to take the step.

If this section is contravened, the decision to which it relates will not be invalidated.

Division 2—When authorities or transfers take effect

Restrictions on authority or transfer taking effect

Section 34KO applies where an environmental authority (mining activities) is issued, amended or transferred. The authority or the amendment or transfer of the authority takes effect on the later of the stated events to happen:

- the granting under the *Mineral Resources Act 1989* of each relevant mining tenement;
- each environmental authority holder has become a holder of each relevant mining tenement.
- if a person other than an environmental authority holder is a holder of any relevant mining tenement, the person ceases to be a holder of the tenement
- the day stated in the environmental authority, or when a stated event happens.

A similar provision is inserted in section 319D of the *Mineral Resources Act 1989* to ensure that there is a single effective decision about the issue or transfer of a mining tenement and the relevant environmental authority (mining activities).

Division 3—General provisions for applications and conditions

Grounds for refusing application for or to transfer authority

Section 34KP applies if the administering authority decide to refuse an application for, or to amend, or to transfer an environmental authority (mining activities), or an objections decision recommends the application be refused, or the Minister decides that the application be refused. It lists the grounds under which the administering authority may refuse an application.

Conditions that may be made

Section 34KQ applies for the making of relevant acts which are defined as:

- imposing or amending a condition of an environmental authority (mining activities);
- deciding a proposed condition for a draft environmental authority;
- an objections decision recommending a condition;
- a condition imposed by the Minister in deciding an application;
- the granting, or the amendment, cancellation, surrender, suspension or transfer of, or other dealing with, an environmental authority (mining activities); and
- recommending under section 29Y of the *State Development and Public Works Organisation Act 1971* a condition that must be attached to a draft environmental authority.

A relevant act may require the holder of an environmental authority to do any or all of the following—

- install and operate stated plant or equipment in a stated way within a stated period;
- take stated measures to minimise the likelihood of environmental harm being caused;
- carry out and report on a stated monitoring program;
- prepare and carry out an environmental management program;
- give relevant information reasonably required by the administering authority for the administration or enforcement of the Act; and
- carry out or report about stated rehabilitation or remediation work relating to the environmentally relevant activity, the subject of the environmental authority.

A relevant act may also:

- prohibit the holder from changing, replacing or operating any plant or equipment installed in the licensed place if the change, replacement or operation of the plant or equipment increases or is likely to substantially increase the risk of environmental harm;
- include a condition requiring the giving of financial assurance.; or

- provide that the environmental authority ceases, or ceases to have effect on a stated day or when a stated period ends (ie a mining tenement expires).

The administering authority may impose conditions on an environmental authority that impose an obligation on the environmental authority holder that continues to apply after the authority has ended or ceased to have effect. For example, the condition may be require land to be rehabilitated or a site management plan to be prepared after the relevant environmental authority has ended.

Additional conditions override standard environmental conditions

Section 34KR states that, where an environmental authority (mining activities) contains standard environmental conditions and an additional condition and there is an inconsistency between the standard environmental conditions and the additional condition, the additional condition prevails to the extent of the inconsistency. It is intended that additional conditions may be imposed that alter or override the standard environmental conditions.

Division 4—Principal Holder of Authority

Application of Division 4

Section 34KS states that division 4 applies where an environmental authority (mining activities) is held jointly by 2 or more persons.

Appointment of principal holder

Section 34KT states that a person who is the principal applicant for an application for an environmental authority becomes the principal applicant for the authority if it is granted. (For further information on principal applicants refer to section 219ABB).

The joint holders of an environmental authority may appoint one of themselves as the principal holder by given a written notice, signed by all the holders, to the administering authority. They may also cancel such an appointment by providing written notice of the cancellation to the administering authority.

Effect of appointment

Section 34KU provides that the principal holder of an environmental authority may submit a notice or other document regarding the environmental authority to the administering authority on behalf of all the holders of the administering authority. For example, a plan of operations or audit statement submitted by the principal holder, is taken to have been submitted on behalf of all the joint holders.

Similarly, a notice or other document regarding the environmental authority which the administering authority serves on the principal holder is taken to have been served on each of the joint holders.

Division 5—Death of authority holder

Personal Representative becomes the holder

Section 34KV provides that if the holder of an environmental authority (mining activities) dies, the personal representative of the holder's estate is taken to be the holder of the authority.

CHAPTER 2D—GENERAL PROVISIONS ABOUT ENVIRONMENTAL AUTHORITIES

PART 1—INTEGRATED ENVIRONMENTAL AUTHORITIES

Integrated authority may be issued

Section 34KW replaces the existing section 61 of the Act and section 41 of the *Environmental Protection Regulation 1998*. This section allows the administering authority to issue a single environmental authority for multiple activities. These include a single activity carried out at different locations (across local government boundaries), or different activities carried out by a person, or for activities carried out by the person at different places.

Subsection (3) stipulates that the administering authority may issue integrated authorities for any type of environmental authority issued under any chapter of the Act, in any combination. An environmental authority of this type is called an "integrated authority"

Requirements for integrated authority application

Section 34KX replaces section 43 of the Regulation and states a person may lodge a single application for an integrated authority. The application must be accompanied by an integrated management system (an "IEMS submission") for the activities. Subsection (2)(b) replaces existing subsection 61(4) of the Act to ensure that any requirements, such as application or dealings processes, specified under chapters 2B or 2C are complied with.

IEMS submission—content requirements

Section 34KY replaces section 42 of the *Environmental Protection Regulation 1998* and states the requirements for an IEMS submission, which must accompany an application for an integrated authority and contain information about how the activity is to be managed.

Subsection (2) is a new provision, stating that the IEMS submission may address any of the listed matters by reference to an environmental impact statement or an environmental management document.

Requirements for integrated authority

Section 34KZ is a new provision that lists what the administering authority must state on the integrated authority.

Effect of issue of integrated authority

Section 34LA provides for each environmental authority, that forms an integrated authority to be dealt with as that type of environmental authority (e.g. a level 2 environmentally relevant activity which is undertaken under an integrated authority which also includes a level 1 environmentally relevant activity is still to be treated as a level 2 environmentally relevant activity).

PART 2—MISCELLANEOUS PROVISIONS

Annual fee and return

Section 34LB applies to all level 1 environmental authorities except level 1 approvals. Subsection (2) replaces section 68(1) of the Act. The administering authority must, within 30 days of the anniversary day of the environmental authority, give the holder a written reminder notice to pay their annual fee and give the administering authority the annual return in the approved form.

The annual notice must state that if the holder does not comply with the notice, their environmental authority may be suspended or cancelled. This provision replaces section 68(4) of the Act. Section 68(4) of the Act currently requires the administering authority to cancel a licence if the annual licence fee is not paid by the due date. This creates an unnecessary administrative burden for both the licensee and the administering authority as a new licence application is required from the applicant and the administering authority needs to expend its resources reprocessing the application. The administering authority will have the option to suspend the environmental authority so that the environmentally relevant activity can not be carried out. When the annual return is submitted and the applicable fee is paid, the activity can recommence.

The administering authority can recover any unpaid annual fees as a debt.

Reference to environmental authority includes its conditions

Section 34LC states that a reference to an environmental authority in the Act, includes the conditions of that environmental authority.

Effect of Integrated Planning Act, s 6.1.44

Section 34LD clarifies that the power to change or cancel a condition of a development approval for an environmentally relevant activity, under section 6.1.44 of the *Integrated Planning Act 1997*, does not limit a power under the *Environmental Protection Act 1994* to amend, cancel or suspend an environmental authority.

Omission of ch 3 pt 1 (Interpretation)

Clause 7 omits chapter 3, part 1 (Interpretation). Section 35 of the Act which makes provision for an application date for an environmental authority and any subsequent dealings has been replaced by section 219AD.

Omission of ch 3 pts 3-4C

Clause 8 omits chapter 3, parts 3 to 4C. Sections that were previously located in chapter 3, part 3, are now located in chapter 1, part 3, division 2, subdivision 3A. Sections that were previously located in chapter 3, parts 4, 4A and 4B are now located in chapter 2B. Sections that were previously located in chapter 3, part 4C are located in chapters 2B, 2D and 3A.

Amendment of s 72 (When environmental audit required)

Clause 9 applies to the power of the administering authority to require an audit if the holder of, or a person acting under, the environmental authority, other than a level 1 or 2 approval is, or has been contravening, a conditions of an environmental authority, environmental protection policy or environmental management program.

The administering authority must give a person an information notice about a decision to require an audit. An information notice notifies the person of their rights of review and appeal

Amendment of s 73 (When environmental investigation required)

Clause 10(1) amends section 73 of the Act to enable the administering authority to request an environmental investigation if an activity is causing environmental harm. Activities causing environmental harm include environmental nuisance, which can be investigated by requiring the person to conduct or commission an environmental investigation. The ability to require an environmental investigation in such instances is more appropriate and practical than issuing an environmental protection order.

Amendment of s 76 (Administering authority to consider and act on environmental reports)

Clause 11 amends section 76 to refer to holders of all environmental authorities.

Amendment of s 82 (Administering authority may require draft program)

Clause 12 amends section 82 to refer to all environmental authorities, other than level 1 or 2 approvals.

An administering authority may require a draft environmental management program if a breach of a condition of an environmental authority has occurred.

Omission of s 86 (Administering authority may require additional information)

Clause 13 omits section 86 of the *Environmental Protection Act 1994.* Section 86 gave an administering authority the power to require additional information to allow it to decide an application for approval of an environmental management program and extends the period for the administering authority to decide such an application. This section has been relocated and replaced by sections 219AG and219AH, enhancing consistency and general application, they also replace similar provisions relating to applications to amend or transfer environmental authorities.

Amendment of s 94A (Application)

Clause 14 amends section 94A(3) to enable the administering authority to amend an environmental management program only if it is reasonably satisfied that the amendment will not result in increased environmental harm.

Omission of s 96 (Compliance with program)

Clause 15 omits section 96.

Amendment of s 97 (Effect of compliance with program)

Clause 16(1) replaces references to a licence in section 97 with ‘an environmental authority, other than a level 1 or 2 approval’, for consistency in terminology throughout the Act and to include all persons acting under an approval of an environmental management program.

Amendment of s 109 (When order may be issued)

Clause 17 enables the administering authority to issue an environmental protection order to secure compliance with a condition of a site management plan, an audit notice or a surrender notice.

Amendment of s 115 (When financial assurance may be required)

Clause 18 amends section 115 to remove the requirement for financial assurance to be given in a stated form. The financial assurance must be lodged in a form that the administering authority considers appropriate. The amendments also allow the administering authority to require a financial assurance for an environmental authority other than a level 1 or 2 approval and to cover the cost of measures necessary "to maintain" the environment because of environmental harm caused by the activity.

Amendment of s 116 (Person may show cause why financial assurance should not be required)

Clause 19 amends section 116 to exclude the requirement for the administering authority to give the applicant for an environmental authority (mining activities) or a level 1 or 2 approval, a show cause notice about the proposed requirement for financial assurance. The show cause notice provision is not necessary for environmental authorities (mining activities), because there is a separate application assessment process for mining activities that provides appeal rights to the Land and Resources Tribunal where a person is dissatisfied with the requirement to lodge an amount of financial assurance as a condition of environmental authority. (Financial assurance cannot be required for level 1 and 2 approvals under section 115.)

Amendment of s 117 (Application for amendment or discharge of financial assurance)

Clause 20 amends section 117 to replace 'licence' with 'environmental authority' and 'written notice' with 'information notice' (an information notice is defined in schedule 4 (Dictionary)) and to require the application to be in the approved form. These amendments are for consistency and general application.

Clause 20(3) gives the administering authority the power to require an audit statement for the financial assurance for an environmental authority (mining activities) and sets out the requirement for the audit statement.

Clause 20(5) removes the requirement for the administering authority, if they decide to refuse the application, to give the holder a notice stating that they may apply for an internal review and appeal as this function is included in the information notice.

Amendment of s 118 (Claims on financial assurances)

Clause 21 amends section 118 to replace 'a licence or' with ' an environmental authority' and "the licensee or approval holder" with "the authority or approval holder" and 'written notice' with 'information notice' and to include the words "or might reasonably incur" after "incurs". These amendments are for consistency and general application.

Clause 21(3) allows the administering authority to claim on a financial assurance where it incurs costs or expenses in taking action to secure compliance with an environmental authority, environmental management program or site management plan, or any conditions therein for which financial assurance has been given.

Clause 21(6) defines "environmental authority" and "holder" for the purposes of the section. An "environmental authority" includes a cancelled or surrendered environmental authority. This enables the financial assurance to be held for conditions requiring work to be carried out after the environmental authority has been surrendered or cancelled, for example, work involving rehabilitation or restoration of the environment.

Omission of s 118D (Meaning of "owner" for pt 9B)

Clause 22 omits section 118D. The definition of "owner" previously contained in section 118D has been relocated to schedule 4 (Dictionary), so the definition applies throughout the Act.

Replacement of ch 3, pt 9B, div 5, sdiv 3 (Compliance with site management plan)

Clause 23 changes chapter 3, part 9B, division 5, subdivision 3 heading to "Restriction on local government approvals and authorities" so that it reflects the content of the subdivision.

Approval or authority must not allow contravention of site management plan

Clause 24 amends section 118ZY to include a reference to the *Integrated Planning Act 1997* or any other Act, to ensure that an approval or any other authority does not authorise a contravention of a site management plan. The offence provision has been relocated to Chapter 3A.

Amendment of s 118ZZF (Removal and disposal of contaminated soil)

Clause 25 provides for the management of contaminated soil from interstate, which waste transporters are seeking to dispose of or treat in Queensland. A maximum prescribed penalty of 100 penalty units applies.

Insertion of new s 118ZZG

Clause 26 requires a person removing and disposing of soil under a disposal permit, to comply with the permit's conditions. A maximum prescribed penalty of 100 penalty units applies.

Replacement of chapter 3, part 10 heading (Environmental offences)

Clause 27 inserts new *Chapter 3A (General environmental offences)* to consolidate environmental offences into one Chapter.

CHAPTER 3A—GENERAL ENVIRONMENTAL OFFENCES

PART 1—OFFENCES RELATING TO ENVIRONMENTALLY RELEVANT ACTIVITIES

Division 1—Offences

Environmental authority required for level 1 environmentally relevant activity

Section 118ZZH replaces section 39(1) of the Act and has been amended to include mining activities that are a level 1 environmentally relevant activity. A level 1 environmentally relevant activity (other than a mining activity) can not be carried out without a licence or level 1 approval. The maximum penalty of 400 penalty units still applies.

Environmental authority or development approval required for level 2 environmentally relevant activity

Section 118ZZI replaces section 40 of the Act and section 5 of the *Environmental Protection Regulation 1998*. A person must not carry out a level 2 environmentally relevant activity unless a development approval has been given or the person holds a level 2 approval or a standard environmental authority (mining activities). The maximum penalty of 165 penalty units is unchanged.

New approval required for certain activities if significant change

Section 118ZZJ replaces section 6 of the *Environmental Protection Regulation 1998*. This section has been relocated and amended, however the changes do not affect the operation of the existing provision.

Division 2—Exemptions

Special provisions for interstate transporters of controlled waste

Section 118ZZK provides for the mutual recognition of controlled waste transporters' environmental licences issued in other States and Territories in accordance with the requirements of the *National Environment Protection Measure for the Movement of Controlled Waste Between States and Territories.*

This section lists the circumstances where an interstate transporter of controlled waste, who holds an environmental licence issued in another State, is recognised under the Act and confirms that the Act applies to the interstate controlled waste transporter, waste transportation, the vehicle and documents required to be held or kept.

Definitions for "controlled waste", "interstate licence" and "interstate transportation" are provided for this section. "Controlled waste" is defined by reference to the meaning given under the *National Environment Protection (Movement of Controlled Waste between States and Territories) Measure*, made by the National Environment Protection Council on 26 June 1998 under the national scheme laws and notified in the Commonwealth Gazette No. G 27 on 8 July 1998 at page 2212.

The definition in the Measure is lengthy and could not realistically be incorporated into the Act. It would be impracticable to fully list the definition within the main body of a bill. Users of the legislation (interstate transporters) are generally familiar with the terms of the Measure and the criteria that apply to controlled wast

PART 2—OFFENCES RELATING TO ENVIRONMENTAL REQUIREMENTS AND DEVELOPMENT APPROVALS

Division 1—Environmental authorities

Contravention of condition of environmental authority

Section 118ZZL replaces section 70 of the Act. The section applies to mining activities and requires that a person who holds, or is acting under an environmental authority must not wilfully contravene or contravene a condition of that environmental authority. The penalty has not changed.

Authority holder responsible for ensuring conditions complied with

Section 118ZZM requires the holder of an environmental authority to ensure that everyone acting under the authority complies with the conditions of the authority. The responsibility extends to persons acting under the authority, such as employees and subcontractors.

If a person acting under the authority commits an offence under section 118ZZL (ie. a contravention of a condition of the authority), each holder of the environmental authority is guilty of an offence, unless it can be shown that they took all reasonable steps to ensure compliance with the conditions, were not aware of the contravention and could not by the exercise of reasonable diligence have prevented the contravent

This section ensures that all persons who hold an environmental authority can be held responsible for a breach of the conditions of the authority unless they took reasonable steps (as described in subsection (4)) to ensure that the conditions were complied with.

Division 2—Environmental management programs

Contravention of program

Section 118ZZN replaces section 96 of the Act. The provision includes persons acting under an environmental management program so that the holder of an approval of an environmental management program, or a person acting under an environmental management program must not wilfully contravene or contravene a program. The penalty has not changed.

Approval holder responsible for ensuring program complied with

Section 118ZZO requires the holder of an environmental management program to ensure that everyone acting under the program complies with its conditions.

If a person acting under the program commits an offence under section 118ZZN (ie. a contravention of a condition of the program), the holder of the environmental management program is guilty of an offence, unless it can be shown that they took all reasonable steps to ensure compliance with the conditions, were not aware of the contravention and could not by the exercise of reasonable diligence have prevented the contravent

This section ensures that all persons who hold an environmental management program can be held responsible for a breach of the conditions of the program unless they took reasonable steps (as described in subsection (4)) to ensure that the conditions were complied with.

Division 3—Site management plans

Contravention of plan

Section 118ZZP relocates section 118ZY of the Act. It provides an offence for the contravention of a condition of a site management plan.

Division 4—Development approvals

Offence to contravene development condition

Section 118ZZQ relocates section 60ZF of the Act. It provides an offence for the contravention of a condition of a development condition of a development approval.

PART 3—OFFENCES RELATING TO ENVIRONMENTAL HARM

Amendment of s 119 (Unlawful environmental harm)

Clause 27 amends section 119(2) by replacing paragraph (b) and inserting a new subsection (3) to clarify how a defendant may demonstrate compliance with the general environmental duty. The changes do not affect the current meaning of the section.

Insertion of new chapter 3A, part 3, heading

Clause 28 inserts a new heading after section 123: "Part 4—Other Offences".

Amendment of s 135 (Entry of place)

Clause 29 inserts a new heading "Entry of place—general". The section states that an authorised person may enter a place where an environmentally relevant activity, approved under an environmental authority or development approval, is conducted. The entry must be authorised under sections 136, 136A or 136B of the Act. However, an authorised person may enter a place to contact the occupier without authorisation to seek the occupier's consent or if in possession of a warrant.

Amendment of s 136A (Entry of land—preliminary investigation)

Clause 30 relocates the term "preliminary investigation" to schedule 4 (Dictionary).

Insertion of new s 136B

Clause 31 provides for the authorised person to enter the access land and take into or over it any thing the person reasonably requires for exercising a power under section 140 (general powers for places and vehicles) in relation to the primary land. The access powers under section 136B are only exercisable if the authorised person may enter the primary land under sections 135 or 136A.

Existing sections 135 and 136A of the Act provide the power for an authorised person to enter a place or enter land to conduct an investigation. However, the bill confers upon authorised officers powers of entry to land for the purposes of crossing over land (the "access land") to enter other land (the "primary land").

The authorised person may cross the access land if the person believes, on reasonable grounds there is an imminent risk of environmental harm being caused to or from the primary land and the person has told, or has made a reasonable attempt to tell, the occupier that the person is permitted to enter the access land.

Before crossing the access land, the authorised person must obtain the agreement of the occupier of the access land or give at least 7 days written notice to the occupier before the entry. In exercising a power under this section, the authorised person must take all reasonable steps to ensure the person causes as little inconvenience, and does as little damage, as is practicab

The authorised person must not enter a structure, or part of a structure, used for residential purposes.

Accordingly, the powers of entry conferred by the bill are relatively narrow in their scope, and enable an authorised person to effectively exercise the power conferred by existing provisions in the Act.

Amendment of s 138A (Order to enter land to conduct investigation or conduct work)

Clause 32 states that an authorised person may apply to magistrate for an order to enter land to carry out work on the land to prevent or minimise environmental harm or rehabilitate or restore the land because of an authorised activity, remediate land managed under a site management plan, or secure compliance with an environmental authority, program or plan.

The environmental authority holder or environmental management program holder is given written notice of the application for an order to enter land.

A magistrate must be satisfied that an order to carry out the work is reasonable and necessary.

Amendment of s 180 (Evidentiary provisions)

Clause 33 replaces "licence or other authority" with "report, environmental requirement or other authority or permit issued or given under the Act" (allowing the administering executive to certify a wider range of documentation) and "licence" with "an environmental requirement" (defined in schedule 4).

Amendment of s 181 (Special evidentiary provision—environmental nuisance)

Clause 34 amends section 181(1) and (2), to include "light" as a type of emission for which an authorised person can give evidence of environmental nuisance.

Amendment of s 188 (Notice of defence)

Clause 35 amends section 188 to refer to the new chapter 3A. A person intending to rely on a defence mentioned in chapter 3A must give written notice of their intent to the prosecutor.

Replacement of s 198 (Delegation by chief executive)

Clause 36 inserts sections 198 and 198A.

Delegation by chief executive

Section 198 replaces section 198 of the Act. The section has been amended to include the delegation of the Chief Executive's powers to a local government. A delegation of a power to a local government may permit the sub-delegation of the power to an appropriately qualified employee of the local government.

Delegation by other administering executives

Section 198A states the local government's chief executive Officer may delegate the officer's powers to an appropriately qualified employee of the local government. Subsection (2*)* makes provision for a sub-delegation of the power to another appropriately qualified employee of the local government.

Amendment of s 200 (Dissatisfied person)

Clause 37 replaces references to licence and approval to environmental authority for consistency and amends section 200(1)(a)(ii) by inserting the term "the holder of the environmental authority holder".

Clause 37 updates the list of dissatisfied persons for an original or review decision in the amended Act.

Amendment of s 203 (Stay of operation of original decisions)

Clause 38 amends section 203 to direct stay of operation for original decisions mentioned in schedule 1, part 1 to the Land and Resources Tribunal and decisions mentioned in schedule 1, part 2 to the Planning and Environment Court.

Replacement of ch 6, pt 3, div 3, hdg

Clause 39 inserts a new division for appeals to the Land and Resources Tribunal.

Division 3—Appeals

Subdivision 1—Appeals to tribunal

Review decisions subject to tribunal appeal

Section 203A states that this division applies to that are subject to objection or appeal to the Land and Resources Tribunal (listed in schedule 1, part 1).

Right of appeal

Section 203B states that any person who is a "dissatisfied person" (see definition in section 200) may appeal to the Tribunal.

Appeal period

Section 203C requires an appeal to be lodged within 30 days of the applicant receiving notice of the decision, unless the Tribunal extends the period.

Tribunal mediation

Section 203D provides for any party to the appeal to ask the Tribunal to conduct or provide mediation for the appeal at any time before the appeal.

Nature of appeal

Section 203E clarifies that the Tribunal, in hearing an appeal under this division, is not bound in any way by the previous decision of the administering authority.

Tribunal's powers for appeal

Section 203F provides the Tribunal the same powers as the administering authority in deciding the appeal.

Decision for appeals against refusals under s 34GW

Section 203G requires the Tribunal, when considering an appeal against a decision to refuse to allow a non-standard mining lease application to proceed, to either confirm or reverse the decision. If the Tribunal reverses the decision, this section also extends the time allowed for making the decision under section 34FO, to the time that the tribunal makes its decision.

Decision for other appeals

Section 203H provides the options the Tribunal has for all appeals to the tribunal, other than under section 203G as mentioned above. The Tribunal has the same powers in setting aside or substituting a decision as the administering authority had in making the original decision and the Tribunal's decision is taken to be the decision of the administering authority for the purposes of the Act except for section 219K and the current subdivision (ie a decision of the Tribunal cannot be appealed against to the tribunal).

A new heading is inserted after section 203H.

Subdivision 2—Appeals to Court

Amendment of s 204 (Who may appeal)

Clause 40 excludes the review rights for dissatisfied persons from review decisions made by the Tribunal under subdivision 1.

Replacement of s 213 (Registers)

Clause 41 replaces the existing section 213, updating the list of registers the administering authority is required to keep under the Act. It includes documents required under chapter 2A of the amending Act relating to EIS provisions for mining activities, environmental authorities and development approvals for environmentally relevant activities and documents referred to in chapter 2C relating to the administration of environmental authorities for mining activities.

Section 213A (Keeping of registers)

Section 213A requires that registers kept for codes of environmental compliance and standard environmental conditions must include a copy of the code or standard environmental conditions and the gazette notice that notified the original approval.

The administering authority may, where it considers it impracticable to include a document in any other register such as those listed in section 213, include details of the document in the register instead of the document.

If the register only includes details of a document, the document must be kept open for public inspection in the way required under section 214.

Section 213A(4) replaces section 60A of the *Environmental Protection Regulation 1998*. If particulars of any land are recorded in the environmental management register or contaminated land register, the real property description of the land must be included.

The administering authority may keep a register in the way it considers appropriate including, for example, on the administering authority's web site.

Amendment of s 214 (Inspection of Register)

Clause 42 maintains the existing exemption for the environmental management register and contaminated land register from the requirements of section 214. This clause also amends subsection (2) by requiring registers to be kept open for inspection at the agency's relevant office for the administration of the Act

Insertion of new s 214A (Appropriate fee for copies)

Clause 43 requires the administering authority or another entity on payment of the appropriate fee, to give a copy of all or part of a document to that person. The appropriate fee for the copy is the lesser of either the amount the administering authority considers is reasonable or the cost incurred in making the copy and giving it to the person.

An administering authority or another entity may choose to provide a document for less than the reasonable cost or for no payment. For example, the proponent for a major mining project may choose to subsidise the cost charged to the public (or particular groups of stakeholders) for copies of the EIS in order to ensure full public participation in the assessment process.

Subsection (3) provides that, despite subsection (2) or any other provision of the *Environmental Protection Act 1994*, the administering authority or other entity may give the document without the payment. This allows the administering authority to 'waive' payment of such fees in special circumstances. This section does not apply where a regulation prescribes a specific fee for the provision of a document.

Subsection (4) provides that "document" in this provision does not include the environmental management register or the contaminated land register, or extracts of these registers.

Amendment of s 215 (Approved forms)

Clause 44 provides that an approved form used under the *Environmental Protection Act 1994* may be combined with an approved form under another Act (for example the *Mineral Resources Act 1989*).

Insertion of new ch 7, pt 1 heading

Clause 45 inserts a new heading "Part 1—Approval of Codes of Practice and Standard Environmental Conditions" before section 219.

Insertion of New ss 219AA to 219BE

Clause 46 inserts two new sections, 219AA and 219BE, dealing with standard environmental conditions and three new parts. Part 2 deals with general provisions about applications and submissions, part 3 deals with disclosure exemptions and part 4 deals with entry to land to comply with an environmental requirement.

Minister may approve standard environmental conditions

Section 219AA applies if a code of environmental compliance is made under a regulation and the code contains standard environmental conditions for an environmentally relevant activity.

The codes of environmental compliance provide a simplified approval process for low risk (level 2 or standard) mining projects. The code must be made under the *Environmental Protection Regulation 1998*. The code includes the standard environmental conditions, which are legally enforceable and guidelines on how the holder may comply with the standard environmental conditions.

The standard environmental conditions are the legally enforceable conditions for a standard environmental authority. The standard environmental conditions are technical in nature and do not involve matters of public policy.

The EPA Minister may approve the standard environmental conditions by Gazette notice. The EPA must keep copies of the approved conditions open for public inspection during office hours on business days at the department's head office and any other place the EPA Minister considers appropriate.

Effect of changes to standard environmental conditions.

Section 219AB states the effects of changes to the standard environmental conditions. If there is an environmental authority to which the standard environmental conditions apply and there is a change to the standard environmental conditions after the grant of the environmental authority, then the existing standard environmental conditions continue to apply to the authority, despite the change.

PART 2—GENERAL PROVISIONS ABOUT APPLICATIONS AND SUBMISSIONS

Definitions for pt 2

Section 219AC is a new provision that lists the definitions for the part.

What is the "application date" for application or EMP submission

Section 219AD replaces section 35 of the Act. The section sets the application date for an application for a new environmental authority, amendment or transfer of an environmental authority (other than an environmental authority for mining activities) or an environmental management program submission. The application date is 14 days after the application is made to the administering authority.

Electronic Application

Section 219AE states the administering authority may accept documents submitted in electronic format. If the administering authority indicates on an approved form that electronic submission is acceptable, then an electronic document which is substantially similar to the approved form and meets any

requirements stipulated by administering authority in the approved form for electronic lodgement is taken to have been validly submitted. For example, the administering authority may stipulate that a text document must be presented in a form readable by one of a number of stated word processing programs such as Microsoft Word Version 6.

Electronic notices about applications and submissions

Section 219AF states that notices about submissions or applications may be given in electronic form (regardless of whether the original application was made electronically). This applies both to documents sent from the administering authority to the applicant and to documents sent from the applicant to the administering authority.

Extension of decision period

Section 219AG replaces section 65 of the Act. The section allows the administering authority to extend the time to make decisions for applications relating to environmental authorities or environmental management programs. The administering authority must give the applicant and any submitters an information notice about the decision. This existing provision is necessary to ensure good decision making that is based on accurate and correct information when the administering authority is deciding an application or submission under this Act.

Administering authority may seek advice, comment or information

Section 219AH describes the process the administering authority may take in requesting more information to decide an application or submission. The administering authority may seek additional information, advice or comment from third parties and in any way it sees fit, including by public notice.

Decision criteria are not exclusive

Section 219AI clarifies that where various sections of the Act require the administering authority (or another entity such as the chief executive or the Minister) to consider certain criteria before making a decision, these criteria are not exhaustive and do not prevent the decision-maker from considering other matters which they consider relevant.

Publication of decision or documents by administering authority

Section 219AJ allows the administering authority to publish a decision or a document on the internet. The document may be published by placing a copy of it on the authority's website or by placing a link to the document on the authority's website. Such publication fulfils any requirement under this Act to publish a notice or decision unless another section requires notice be given in a specific manner (eg by public advertisement in a newspaper or by service of a notice at a specified location). Where such a requirement exists, this section does not replace the requirements of the relevant section. The decision or document published on the internet may also be published in any other way decided by the chief executive.

Investigation of applicant suitability or of disqualifying events

Section 219AK states that the administering authority may investigate a person to determine if they are a suitable person to hold or continue to hold an environmental authority or to determine if a disqualifying event (such as a conviction for an offence under this Act or an equivalent interstate Act) has occurred in relation to the person.

The administering authority may seek advice from the administering authority of a corresponding law to give information about the person in relation to an environmental offence.

The commissioner of the police service is obliged to comply with any such request and to seek relevant information from any interstate police service. This requirement is subject to the *Criminal Law (Rehabilitation of Offenders) Act 1986*, which provides for records of certain convictions to be deleted after a specified time.

Use of information in suitability report

Section 219AL prohibits the administering authority from using information in a suitability report for any other purpose than to make the decision for which the report was requested. It also requires the administering authority, in making the relevant decision, to consider how long ago the offence was committed and the nature and relevance of the offence.

Notice of use of information in suitability report

Section 219AM states that, if the administering authority has obtained a suitability report about a person, they must give a copy of the report to that person and allow them to respond to the information contained in the report before using the information for a matter mentioned in s219AK.

Confidentiality of suitability reports

Section 219AN requires current or former public servants to keep suitability reports confidential and sets a maximum penalty of 100 penalty units for an offence against this provision. The information may be disclosed (eg with the written permission of the person who is the subject of the report or to a Court hearing an appeal against the relevant decision).

Destruction of suitability reports

Section 219AO requires the administering authority to destroy suitability reports as soon as practical after making the decision for which the report was prepared. However, if the decision is open to appeal or review, the report may not be destroyed until the end of the period in which the person may appeal or apply for a review. If the report regards a conviction for an offence and there is an appeal current against the conviction (or the time to lodge such an appeal has not expired), the report can not be destroyed until any such appeal has been concluded or the appeal period has ended.

PART 3—EXEMPTION FROM DISCLOSURE

Division 1—Obtaining disclosure exemption

Who may apply

Section 219AP states that a person may apply to the administering authority for a "disclosure exemption" for stated information contained in a document submitted, or proposed to be submitted, by the person under the Act.

Requirements for application

Section 219AQ lists the requirements for an application for a disclosure exemption.

Deciding application

Section 219AR requires the administering authority to the application within 20 business days after the application is received.

Criteria for decision

Section 219AS lists the criteria the administering authority must consider in deciding whether to grant a disclosure exemption.

Exemption may be limited

Section 219AT provides for the administering authority to grant a disclosure exemption application for the whole or part of the information requested to be exempted. The administering authority may also decide to grant the application for only a stated period.

Notice of refusal or decision to limit exemption

Section 219AU provides the process if the administering authority decides to refuse or allow a disclosure exemption application, allow a disclosure exemption application for only part of the information or grants the application for only a stated period.

Division 2—Effects of disclosure exemption

Subdivision 1—Preliminary

Application of div 2

Section 219AV states division 2 applies if a disclosure exemption application has been granted for any period that has not yet ended.

Meaning of "exempted material" for div 2

Section 219AW(1) defines "exempted material" for this division as information that comprises the disclosure exemption or a part of a submitted document that contains the information.

Exempted material under subsection (1) ceases to have that status, if it is publicly disclosed by the person who obtained the disclosure exemption.

Subdivision 2—Effects

Effect on operation of disclosure requirements under Act

Section 219AX states the restrictions on disclosing exempted material under the Act if there is a requirement under the Act to disclose the material.

Effect on administering authority

Section 219AY provides that unless a disclosure is made under section 219AX or is expressly allowed under another Act, the administering authority must not disclose exempted material to anyone other than the applicant for the disclosure exemption.

Effect on officials

Section 219AZ provides that an official who acquires exempt material, must not disclose it to anyone else, unless the disclosure is made under section 219AX, or is expressly permitted or required under another Act. A maximum penalty of 100 penalty units is prescribed for a breach of this provision.

PART 4—ENTRY TO LAND TO COMPLY WITH ENVIRONMENTAL REQUIREMENT

Entry Orders

Section 219BA states the process to be followed in seeking entry to land in order to conduct works related to an environmental requirement (refer to schedule 4).

The person required to conduct the works may apply to the Magistrates Court for an order (an "entry order") authorising them to enter the land to which the environmental requirement relates (the "primary land") or other land (the "access land") which it is necessary or desirable for them to cross to enter the primary land. The application must state fully the grounds on which the order is sought.

The applicant must serve a copy of the application on the owner of the primary land and any access land. If the owner of the primary land or any access land is not the occupier of the relevant land, the applicant must also serve the order on the occupier. The court may only issue an entry order if it is satisfied that it is reasonable and necessary to do so to comply with the environmental requirement. An entry order may not authorise entry to a structure, or part of a structure, which is used as a residence.

The entry order must state the conditions under which the entry may be made. The entry order may include conditions specifying that the applicant must lodge a security for any damage, cost or loss which may be incurred by anyone because of the exercise or purported exercise of a power under an entry order and conditions specifying how and when any such security may be used or release

Procedure for entry under entry order

Section 219BB states the procedures for a person intending to enter land under an entry order where the occupier of the land is present

Duty to avoid damage

Section 219BC requires the person exercising a power under an entry order to take all reasonable steps to ensure that they cause as little inconvenience and damage as practicable.

Notice of damage

Section 219BD requires that, if a person who enters land under an entry order damages the land or something on the land, the person must as soon as practicable give written notice of the damage to the owner of the land, the occupier of the land (if the owner is not the occupier) and the administering authority.

If it is not practical to give the notice to the owner and/or the occupier, the person must leave the notice in the place where the damage occurred in a prominent place and in a reasonably secure manner.

The notice must state details of the damage and that the person who suffered the damage may seek compensation (see section 219BE).

Compensation

Section 219BE states that if a person suffers a cost, damage or loss because of the exercise or supposed exercise of a power under an entry order, they are entitled to compensation from the person who obtained the entry order. An action for compensation may be brought in any court of competent jurisdiction. However the court may only order payment of compensation if it is satisfied that it would be just to do so given the circumstances of the particular case.

PART 5—REGULATIONS

Amendment of s 220 (Regulation-making power)

Clause 47(1) amends section 220(2)(c) by omitting the word "licensees" and inserting the words "holders of environmental authorities". This enables regulations to be made for all environmental authority holders for the type of tests and monitoring programs to be conducted.

Clause 47(2) amends section 220(2)(g) to insert the term "generation" which is a more appropriate description when referring to specific contaminants such as noise and in some cases, odour. The amendment clarifies that regulations can be made about contaminants that are generated.

Clause 47(3) amends section 220(2)(j) to ensure that regulations may be made about environmental impact statements, reports, statements or studies and inserts section 220(2)(ja) to provide a head of power to make any regulations that:

- concern the requirements or processes under Chapter 2A (EIS process) and

- are necessary to meet accreditation requirements under the Commonwealth *Environmental Protection and Biodiversity Conservation Act 1999* or the requirements for a bilateral agreement for that Act.

Clause 47(4) inserts sections 220(2)(m) to (r) which lists additional things that the Governor in Council may make regulations about under the Act, however its effect does not restrict section 220(1).

Clause 48 substitutes the chapter 8 heading. Chapter 8—Savings, Transitional And Related Provisions

Omission of chapter 8, part 1 (Repeals)

Clause 49 omits the chapter 8, part 1 heading "*Repeals"* and section 222 as all Acts specified in schedule 2 have now been repealed.

Replacement of chapter 8, part 2

Clause 50 replaces the existing part 2 heading *"Part 1—Provisions for Environmental Protection And Other Legislation Amendment Act 1997"* and renumbers the part as part 1.

Omission of sections 235 and 236

Clause 51 omits sections 235 and 236 as they are now redundant.

Insertion of new chapter 8, part 2

Clause 52 inserts a new chapter 8, part 2 after section 238 heading *"Part 2—Provisions for Environmental Protection And Other Legislation Amendment Act 2000"*. These are transitional provisions for the Bill.

PART 2—PROVISIONS FOR ENVIRONMENTAL PROTECTION AND OTHER LEGISLATION AMENDMENT ACT 2000

Division 1—Preliminary

Definitions for part 2

Section 239 defines certain terms for the purposes of Chapter 8 Part 2.

Division 2—Existing environmental authorities and mining activitie

Subdivision 1—Preliminary

What is a "condition" of a mining tenement for division 2

Section 240 defines what is meant by a "condition" of a mining tenement for the purpose of this division. "Condition" includes any condition determined, imposed or prescribed under the *Mineral Resources Act 1989* stated in or applying to a tenement.

"Condition" also includes any commitments, obligations, requirements or undertakings contained in the most recent version of any planning document for the mining tenement adopted by the Department of Mines and Energy. The section defines what are "planning documents" for the purposes of this section.

The section also provides that a planning document is taken to have been adopted by the Department of Mines and Energy if the document, including any amendment to it, has been accepted or approved by the MRA Minister, a Mining Registrar or the Department of Mines and Energy.

The document or amendment is taken to have been accepted or approved whether or not such acceptance or approval was permitted under the provisions of the *Mineral Resources Act 1989.* This is intended to recognise all variations to planning documents, such as an EMOS, that have been made in the past, including those for which there may not have been a clear power under the *Mineral Resources Act 1989.*

Subdivision 2—Existing authorities for mining activitie

Existing authority becomes an environmental authority (mining activities)

Section 241 provides that any environmental authority in force on the commencement day for, or including, any mining activity is taken to be an environmental authority for mining activities. Therefore any mining activities authorised by an existing licence or approval continue to be authorised under the new provisions.

Conditions of authority

Section 242 provides that the conditions of an environmental authority (mining activities) that is deemed to exist under section 242 above shall be:

- all the conditions applying to the environmental authority immediately before it was deemed to be an environmental authority (mining activities); and
- all conditions (as defined in section 240) of a relevant mining tenement that, under the new system, would reasonably be expected to be conditions of the environmental authority rather than of the tenement; and
- any financial assurance condition under section 253.

The section provides for other conditions to be applied by regulation.

The section also provides that if a condition of a tenement becomes a condition of the environmental authority as described above, it ceases to be a condition of the tenement (avoiding any double jeopardy).

Subdivision 3—Existing mining activities without environmental authority

New environmental authority (mining activities) for existing activities

Section 243 provides that persons who hold a valid mining tenement at the time the new provisions commence, but who do not have a matching environmental authority that could be deemed to be an environmental

authority (mining activities) under section 241, are taken to hold an environmental authority (mining activities) from the day of commencement.

This section is intended to provide a valid environmental authority to holders of existing mining tenements that may be unaware that under the existing legislation they should, but do not, hold a current environmental approval either:

- issued under the *Environmental Protection Act 1994* (some miners were not issued such approvals for a short period in 1997 when the existing requirement to hold a separate an environmental approval commenced); or
- deemed under provisions applying until March 1997 (some such deemed approvals may have become invalid due to transfer as the holders have been unaware that these approvals cannot be transferred).

The approval given under this section is intended to cover only those activities that:

- are permitted under the existing mining tenement; and
- are level 2 activities under the existing Act; and
- are being, or have been, carried out on the tenement.

It is not intended to extend to any new activities, even if these are allowed by the mining tenement.

Conditions of authority

Section 244 provides that the conditions of an environmental authority (mining activities) that is deemed to exist under section 243 above shall be:

- all conditions (as defined in section 240) of a relevant mining tenement that, under the new system, would reasonably be expected to be conditions of the environmental authority rather than of the tenement; and
- any financial assurance condition under section 253.

The section provides for other conditions to be applied by regulation.

The section also provides that if a condition of a tenement becomes a condition of the environmental authority as described above, it ceases to be a condition of the tenement (avoiding any double jeopardy).

Division 3—Unfinished application

Procedure if certificate of application issued and conditions decided

Section 245 provides for applications for a mining tenement and environmental approval that:

- were made before the commencement day; and
- for which a certificate of application under the *Mineral Resources Act 1989* has been prepared; but
- for which the tenement has not been granted by the commencement day.

The section provides that the tenement and environmental approval will be issued under the existing Act (ie as it was before commencement of these provisions). However, immediately after being issued, the environmental approval becomes an environmental authority (mining activities) and the conditions that apply to the environmental authority will be as described for section 242.

Procedure for other unfinished applications

Section 246 provides for applications for a mining tenement and environmental approval that:

- were made before the commencement day; and
- for which a certificate of application under the *Mineral Resources Act 1989* has not been prepared; and
- for which the tenement has not been granted by the commencement day.

This section states that these applications will be treated as though they had been made under the new provisions, except that none of the time limits for deciding applications will apply, nor will the deeming provisions that otherwise take effect if any such time limit is not met.

This last is required because there is a large backlog of applications that it will not be possible to process in the strict timeframes being set for processing new applications.

Division 4—Transitional authorities for mining activities

Subdivision 1—Preliminary

Meaning of "transitional authority" for div 4

Section 247 defines a transitional authority to be any authority that is deemed to exist for an existing project under sections 241 and 243 as well as an authority issued under section 245.

A transitional authority ceases to be a transitional authority after it is amended or transferred. Upon amendment or transfer, the transitional authority that is deemed to exist will be reviewed and the conditions clarified and amended as necessary and incorporated into a complete, written environmental authority (mining activities).

Subdivision 2—Special provisions for transitional authorities

Authority taken to be non—standard

Section 248 provides that all environmental authorities (mining activities) taken to exist under this chapter for existing projects are non-standard (level 1) environmental authorities (mining activities).

This is so that the existing conditions of the project, whatever they are, as per sections 242, 244 and 245, can be continued in force. Under the new provisions, all standard environmental authorities (mining activities) must meet the new criteria for standard mining activities and must be subject to the new standard environmental conditions.

(See section 258 for conversion.)

Limited application of s 118ZZI for authority

Section 249 provides that the offence of carrying out a level 2 activity without a valid authority (section 118ZZI) will not apply to a person carrying out an existing mining activity that is authorised under an existing tenement but is not authorised by the tenement holder's existing environmental authority.

However, the above only applies if the holder either:

- has applied for an amendment that, if granted, would allow the activity that is not authorised by the existing environmental authority; or
- has given the authority notice of the activity and, within 30 days, applies for an amendment that, if granted, would allow the activity.

This section also describes the required contents of the notice of the activity and that notice for any one activity can only be given once (ie no extension of the 30 days).

This section is intended to deal with certain instances where it is understood some uncertainty may exist as to the precise nature of the environmentally relevant activities which are authorised by an existing environmental authority. This situation may have arisen, for example ,on the commencement of the *Environmental Protection Act 1994*, when existing level 2 environmentally relevant activities were deemed to have environmental authorities.

This provision is not intended to allow the conditions applying to any authority to be breached.

"Existing mining activity" is defined in section 239 as an activity carried out under a mining tenement on or at any time before the commencement of the provisions of this Bill.

Requirement to apply to amend or surrender authority

Section 250 requires the holder of a transitional authority granted under section 243 and who holds a relevant mining tenement to, within six months,:

- apply to amend the authority; or

- apply to convert the authority under section 258; or
- apply to transfer the authority; or
- apply to surrender the authority.

The holder of any other transitional authority who also holds a relevant mining tenement application must make an application as described above before the end of the five year transitional period.

If the holder of a transitional environmental authority is not a holder of a relevant mining tenement, the authority holder must apply to either:

- consolidate the authority with that of a tenement holder (under section 262); or
- surrender the environmental authority

on the replacement or amendment of the plan of operations for the relevant project or 90 days before the end of the transitional period, whichever comes first.

Notice by administering authority to amend or surrender

Section 251 requires the administering authority to send a reminder notice to the holder of an environmental authority who is required to submit an application under section 250 but neglects to do so. The holder may be required to make the application within a fixed period of at least 10 business days. The reminder notice must state the reasons for the decision to require the application to be made and the fixed period.

Consequences of failure to comply with reminder notice

Section 252 prescribes that the maximum penalty for failing to comply with a reminder notice issued under section 251 is 100 penalty units.

Additionally, the administering authority may seek to suspend or cancel the environmental authority by following the process set out in Chapter 2C Part 12 (note that appeal rights apply).

Financial assurance for authority

Section 253 provides that, if under the *Mineral Resources Act 1989*, security has been deposited or required in relation to a relevant mining tenement for a transitional environmental authority, a condition is taken to have been imposed on the transitional authority under section 115 of the *Environmental Protection Act 1994*, that the authority holder must give the administering authority financial assurance for each relevant mining tenement.

The purpose of this section is to allow security, which has been determined or deposited to cover both tenure matters and also environmental matters under the *Mineral Resources Act 1989*, to continue to cover environmental matters now managed under the *Environmental Protection Act 1994.* Security is calculated primarily to cover the cost of rehabilitation of land. This will remain the primary purpose of the security, so the security must be accessible under the *Environmental Protection Act 1994* for this purpose.

If the security has been lodged under the *Mineral Resources Act 1989*, the section 115 condition is taken to have been complied with and the security held is taken to be a financial assurance for the matters mentioned in subsections 115 (1)(a) and (b). It is taken to be such despite any provision of the *Mineral Resources Act 1989* or any of the terms of the instrument granting the security.

No additional obligations are being imposed as the change is consequential to the amendments to the Acts.

The form of financial assurance for each relevant mining tenement is taken to have been required in the same form as the security that has been given or required for the tenement.

The amount of financial assurance for each tenement is taken to be the lesser of the amount of security given for the tenement and any amount the administering authority decides would have been required under subsection 115(3) on commencement day

Effect of financial assurance on security

Section 254 provides that, despite section 253 above, any existing security also remains a security under the *Mineral Resources Act 1989* and that the security is in no way discharged, released or terminated by the passage of these amendments.

It does not affect or change the security as a security under the *Mineral Resources Act 1989* or the matters for which the security was given under that Act or the enforcement of the security under that Act, as amended by the amending Act. In effect, the obligation for the financial assurance is, being transferred from the *Mineral Resources Act 1989* to the *Environmental Protection Act 1994.* The rights of any third party financiers are not affected in substa

Plan of operations

Section 255 provides that any current, valid plan of operations for an existing mining lease continues to apply until the proponent seeks to amend it or it comes to the end of its original term. This section also provides that, if there is no current plan of operations, the most recently expired plan of operations is taken to be in force and applies for six months or until proponent seeks to amend it.

Annual fee and return for first year of transitional period

Section 256 applies to any environmental authority (mining activities) taken to exist under this chapter for existing projects instead of section 34LB, for the first year. This section requires the holder to submit an annual return in the approved form and pay the appropriate annual fee prescribed by regulation. (The prescribed annual fee for the first year will be zero for those projects that were operating under a level 2 approval mining approval and therefore were not previously subject to an annual fee.). The prescribed maximum fee for failure to comply with this section is 100 penalty units.

Anniversary day for transitional authorities

Section 257 defines the “anniversary day” for transitional authorities. The anniversary day for a transitional authority is the commencement day if, under section 243, a person is taken to hold the authority or the authority was a level 2 approval under the existing Act.

Subdivision 3—Amendment and consolidation of transitional authorities

Conversion to standard authority by application

Section 258 allows the holder of any environmental authority (mining activities) taken to exist under this chapter for an existing project to apply to have the deemed non-standard (level 1) authority converted to a standard (level 2) authority.

The application must be in the approved form, state that all of the mining activities to be covered are standard mining activities and state that the applicant can and will comply with the relevant standard environmental conditions for the activities.

The application may seek additional conditions.

This section requires the administering authority to decide the application within ten business days. In doing so, the administering authority must consider the criteria mentioned in section 34FO. If the authority approves the conversion, it must substitute the relevant standard environmental conditions for the deemed conditions. The authority may impose additional conditions only if the activities would still be standard mining activities

Other amendment applications

Section 259 provides that Chapter 2C part 8 applies to applications (other than conversion applications under section 258 or consolidation applications under section 262) to amend any environmental authority (mining activities) taken to exist under this chapter for an existing project. However, the public notification and objection provisions under Chapter 2C, Part 6, division 6 do not apply unless changes are being made to the extent or type of mining activities that are authorised, compared to those authorised before the commencement day.

Additional grounds for amendment by administering authority

Section 260 specifies grounds for the administering authority to initiate amendments to any environmental authority (mining activities) taken to exist under this chapter for an existing project. These grounds are in addition to those stated in section 34KD(2).

These provisions are intended to allow the authority to deal with situations where the conditions of a deemed authority:

- cannot be accurately and reliably determined;
- are unclear, uncertain, contradictory or otherwise not reasonably enforceable; or
- do not cover an aspect of the project that may cause environmental harm.

This section also allows the administering authority to amend any condition of a deemed environmental authority when a new plan of operations is lodged. When a new plan of operations is lodged, all the conditions, which to this point have been taken to exist, will be ascertained, reviewed, clarified and amended as necessary and incorporated into a complete, written environmental authority (mining activities).

Ministerial power to amend

Section 261 applies to any environmental authority (mining activities) taken to exist under this chapter. During the transitional period the Minister may amend a transitional authority, or an authority that has been a transitional authority. This power has been included to deal with unanticipated problems that may arise with deemed authorities. This is necessary because some older mining projects (particularly those with leases issued prior to the introduction of the *Mineral Resources Act 1989*) have no clear environmental conditions. Without this provision such projects could find themselves operating illegally (despite the fact that no material environmental harm is being caused).

The intent of the provision is to maintain and protect existing rights and privileges, which could otherwise be unintentionally adversely affected by the transitional period.

The Bill clearly states the process for the Minister to amend these authorities includes:

- notifying the holder of the proposed amendment and reasons it;
- allowing 10 business days for the proponent to make representations;
- considering representations made within the period; and
- notifying the holder of the final decision.

Consolidation of conditions for same mining project

Section 262 allows for the holder of a tenement to apply to have their deemed environmental authority amended to incorporate separately deemed environmental authorities for the same project. Environmental authorities held by persons other than a tenement holder (eg contractors) will have to be incorporated or surrendered before the end of the transitional period to meet the requirements of section 34EU and section 34EW.

An application under this section must be in the approved form. It is not subject to the processes or requirements of chapter 2C. The administering authority must decide the application with 10 business days and notify the applicant within a further 10 business days. Appeal rights apply.

Subdivision 4—Environmental management document requirements

Environmental management document may be required

Section 263 allows the administering authority to require submission of an Environmental Management Plan that satisfies section 34GE for deemed authorities for exploration permits or mineral development licenses or an EMOS that satisfies section 34GS for deemed authorities for mining leases.

This requirement must be made by written notice and allow a reasonable period of at least 28 days to comply. The requirement is subject to appeal. The purpose of this section is to provide for the input needed by the administering authority when reviewing, clarifying or amending a deemed authority.

Consequence of failure to comply with requirement

Section 264 gives administering authorities the power to commence the process (under Chapter 2C part 12 division 2) leading to suspension of an environmental authority if the holder does not comply with a requirement under section 263 above.

Division 5—Transitional provisions other than for mining activities

Unfinished applications under existing Act

Section 265 applies to existing applications for, amendment and transfer of environmental authorities under the Act. The transitional provision states that unfinished applications made before the commencement day under the current chapter 3, part 4 to 4B are to be considered as applications under the new chapter 2B, parts 2 to 4, depending on the application.

Environmental authorities under existing Act

Section 266 applies to existing environmental authorities under the Act. The transitional provisions states that environmental authorities in force under the current chapter 3, parts 4 to 4B are to be considered as environmental authorities under the new chapter 2B, depending on the type of the environmental authority. Section 266(5) states that the provision does not limit the Environmental Protection Regulation 1998, section 73.

Division 6—Miscellaneous provisions

Requirement to seek advice from MRA chief executive

Section 267 provides that the consultation requirements under section 34KN apply for any decision to amend an environmental authority under this part unless the holder has agreed to the amendment in writing.

Existing Act continues to apply for special agreement Acts

Section 268 provides that the provisions of the *Mineral Resources Act 1989* and the *Environmental Protection Act 1994*, as in force immediately before the commencement day, continue to apply unchanged to any activity under any of the designated Special Agreement Acts.

This Bill therefore effects no change to the legislative requirements applying to Special Agreement Act projects.

Transitional regulation making power for pt 2

Section 269 gives the administering authority the power to make any transitional regulations necessary or convenient to resolve any unanticipated problems that arise from moving from the old to the new provisions. These transitional regulations must specify that they are transitional regulations. A transitional regulation expires either 1 year after it is made or when the transitional period ends, whichever happens earlier.

Validation

Section 270 is inserted in response to a Scrutiny of Legislation Committee recommendation. The section declares that part 2A of the Environmental Protection Regulation 1998 which was inserted by an amending regulation on 26 November 1999 was validly made. The 1998 regulation created obligations and offences concerning minor environmental nuisance, particularly noise. Section 271 expires the day after it commences.

Numbering and renumbering of Act

Section 271 provides for the *Environmental Protection Act 1994* to be renumbered when next reprinted.

Replacement of sch 1 (Original decisions)

Clause 53 replaces schedule 1 to update the list of original decisions.

Omission of sch 2 (Acts repealed)

Clause 54 deletes schedule 2 as all Acts in the schedule have now been repealed.

Amendment of sch 3 (Notifiable activities)

Clause 55 amends the list of notifiable activities in schedule 3.

Amendment of sch 4 (Dictionary)

Clause 56 provides definitions for the provisions of the Act.

PART 3—AMENDMENT OF INTEGRATED PLANNING ACT 1997

Act amended in pt 3 and schedule

Clause 57 amends the *Integrated Planning Act 1997*.

Amendment of s 2.6.8 (Minister may proceed straight to designation in certain circumstances)

Clause 58 The existing reference to expired provisions of the *State Development and Public Works Organisation Act 1971* is redundant since the expiry of those provisions. The amendment provides an effective equivalent reference which will enable the Minister to designate land using the process under schedule 7 of the *Integrated Planning Act 1997*, if the Minister is satisfied that the Coordinator General has prepared a report evaluating an Environmental Impact Statement (EIS), for a project that includes community infrastructure.

Second, the clause enables the Minister to designate land using the process under schedule 7 of the *Integrated Planning Act 1997*, if the Minister is satisfied that an EIS under chapter 2A of the *Environmental Protection Act 1994* has been completed.

Amendment of schedule 8 (Assessable, self-assessable and exempt development)

Clause 59 replaces the reference in Schedule 8 to development prescribed under a regulation under the *Environmental Protection Act 1994* with a reference to a matter that, under section 70A of the *Environmental Protection Act 1994* is assessable development for the *Integrated Planning Act 1997*. The effect of this section is unchanged.

Second, mining activity, for which an environmental authority (mining activities) under the *Environmental Protection Act 1994* applies, is made exempt development.

PART 4—AMENDMENT OF *MINERAL RESOURCES ACT 1989*

Acts amended in Part 4

Clause 60 sets out the title of Act to be amended.

Amendment of s 5 (Definitions)

Clause 61 provides for the interpretation of certain words and phrases used in the legislation, the redefining of certain words and phrases and for the deletion of certain definitions.

The definitions "contaminated land", "environmental impact", "environmental impact statement", "hazardous contaminant", "last objection day", "mining project" and "rehabilitation" have been deleted in line with the objectives of this Bill to place the environmental regulation of mining under the *Environmental Protection Act 1994*.

The definitions "access agreement", "applicant", "application notice", "approval", "approved opal or gem mining area", "closing day (native title issues)", "combined hearing", "compensation decision", "compensation trust decision", "consultation and negotiation parties", "consultation period", "consultation period advice day", "consultation start day", "contract conditions", "decision", "high impact exploration permit", "high impact mineral development licence", "land", "low impact activity", "low impact exploration permit", "low impact mineral development licence", "low impact prospecting permit", "mining tenement", "Minister's decision", "native title issues decision", "native title notification party", "negotiated agreement", "non-exclusive land", "notification day (native title issues)", "registered indigenous land use agreement under the Commonwealth Native Title Act", "registered native title party", "registered native title rights and interests", "relevant act", "relevant special interest publication", "right to negotiate provisions", "urgency notice", have been inserted to reflect terminology used in the *Native Title (Queensland) State Provisions Amendment Act 1999* and the *Native Title Resolution Act 2000*.

The definition "certificate of public notice" has been inserted. This will facilitate the processes between the Department of Mines and Energy, the Land and Resources Tribunal and the Environmental Protection Agency.

The definitions "environmental authority (exploration)", "environmental authority (mineral development)", "environmental authority (mining claim)" and "environmental authority (mining lease)" have been inserted to reflect the terminology used in the *Environmental Protection Act 1994*.

The definition "Environmental Protection Act" has been inserted and means the *Environmental Protection Act 1994*.

The definition "EPA administering authority" has been inserted and means for a mining tenement or application the administering authority under the *Environmental Protection Act 1994* for an environmental authority (mining activities) or an application for an environmental authority (mining activities) that relates to the mining tenement or application.

The definition "hearing" is included to provide for the inclusion of a presentation before the tribunal of an interim nature, for example, a directions hearing.

The definition "improvement restoration" is included to provide for the holder of a mining tenement to repair any damage caused to pre-existing improvements.

The definition "last objection day" is included to cater for the relevant mining registrar to fix the last day for the lodgement of objections to an application for a mining claim or a mining lease. This day will be included in the information contained in the certificate of public notice issued in respect of the mining claim or mining lease.

The definition "pre-existing improvements" has been inserted and means, when referring to a mining tenement, all those improvements on, or attached to the land, the subject of the tenement, in existence immediately before the application for the tenement was lodged.

The definition "relevant environmental condition" is inserted and means for a mining tenement a condition of a part 4AA environmental authority under the *Environmental Protection Act 1994* that relates to the tenement.

Omission of s 6 (Meaning of "contaminated land")

Clause 62 removes the existing provisions relating to contaminated land from Section 6 of the *Mineral Resources Act 1989*. These provisions are now contained in the *Environmental Protection Act 1994*.

Insertion of new s 6C (What is carrying out "improvement restoration?")

Clause 63 inserts a new provision to cater for the repair of damage to pre-existing improvements on a mining tenement caused by any activity undertaken on the tenement by the holder. For this part "pre-existing improvements" means all improvements in existence on, or attached to, the land, the subject of the mining tenement, immediately before application for the tenement is lodged. The repair of damage includes the restoration of the improvement to the same or substantially the same condition it was in before the damage happened or the replacement of the improvement with another improvement. This provision confirms that damage may be caused on a mining tenement that is not of an environmental nature.

Amendment of s 21 (Application for prospecting permit)

Clause 64 amends existing provisions to ensure that a copy of the environmental component of the joint application form is given to the EPA administering authority within 5 business days after the application is lodged.

Amendment of s 22 (Reasons for rejection of application to be given)

Clause 65 amends existing provisions to ensure that both the EPA administering authority and the applicant are advised of the rejection of the prospecting permit and the reasons therefor within 5 business days after the mining registrar makes that decision.

Amendment of s 25 (Conditions of prospecting permit)

Clause 66 amends the existing section by including a condition that the holder of a prospecting permit must carry out improvement restoration for the permit if necessary. The amendment also provides that conditions must not be imposed, prescribed or varied on prospecting permits if such conditions are the same, or substantially the same, or inconsistent with, a relevant environmental condition under an environmental authority (prospecting) issued under the *Environmental Protection Act 1994*.

Amendment of s 26 (Provision of security)

Clause 67 clarifies that security for a prospecting permit is required to rectify any actual damage that may be caused to pre-existing improvements on the land the subject of the permit.

Amendment of s 31 (Mining registrar to notify owners of occupied land of grant of parcel prospecting permit)

Clause 68 amends existing provisions to ensure that notice of the grant of the prospecting permit is given to the owners of any land specified in the permit within 5 business days after the grant by the mining register.

Amendment of s 37 (Surrender of prospecting permit)

Clause 69 amends existing provisions to ensure that the EPA administering authority is advised of the surrender of the prospecting permit within 5 business days after lodgement of the surrender by the holder.

Omission of s 45 (Holder of prospecting permit to rehabilitate land)

Clause 70 omits Section 45 from the *Mineral Resources Act 1989*. All rehabilitation requirements for prospecting permits are now contained in the *Environmental Protection Act 1994*.

Omission of s 47 (Staying on occupied land)

Clause 71 omits Section 47(8) from the *Mineral Resources Act 1989*. These requirements are now contained in the *Environmental Protection Act 1994*.

Amendment of s 50 (Entitlements under mining claim)

Clause 72 omits Section 50(2) from the *Mineral Resources Act 1989*. These requirements are now contained in the *Environmental Protection Act 1994*. A new Section 50 (2) has been inserted to confirm that the rights of the holder relate and are taken to have always have related, to the whole of the land comprised in the tenement

Amendment of s 61 (Application for grant of mining claim)

Clause 73 amends the existing section to remove all references made to environmental impact and rehabilitation, which are now contained in the *Environmental Protection Act 1994*. The amendment will require an applicant to provide a statement satisfactory to the mining registrar outlining the proposed activities, excluding rehabilitation, to be conducted on the mining claim. This statement replaces the current requirement to lodge a proposed mining program. This Clause also inserts provisions to ensure that a copy of the environmental component of the joint application form is given to the EPA administering authority within 5 business days after the application is lodged.

Amendment of s 64 (Certificate of application etc.)

Clause 74 amends the existing provisions by reducing the current status of the Certificate of Application. The Certificate of Application will acknowledge the receipt of the application and the fact that the application can proceed. It will also ensure that sufficient information on the proposal is available for negotiations with native title parties to commence. The issue of the Certificate of Application by the mining registrar is not dependent on the assessment level decision by the Environmental Protection Agency.

Following the issue of the certificate the applicant will be required to give each relevant landowner a copy of both the certificate and the application for the mining claim. The giving of the certificate and the application must be done within 7 days after the signing of the certificate by the mining registrar.

Also the section is amended to provide for the mining registrar to extend, at any time, the period during which the landowner can be notified.

Insertion of new ss 64A to 64D

Clause 75 inserts new *Sections 64A, 64B* and *64C* to provide for the issue and publication of a certificate of public notice in respect of a mining claim. The certificate of public notice is a new initiative and has been introduced to enhance the integration of inter-agency processes. The certificate will take on the role of the old certificate of application but will only be issued when the draft environmental authority is complete and native title negotiations have reached an appropriate stage.

Sub-clause (1) of *Section 64A* provides for the mining registrar to issue the certificate of public notice only if there has been compliance with the provisions of the Act. The issue of the certificate of public notice can only occur if a certificate of application has already been issued and endorsed by the mining registrar and the draft environmental authority for the relevant environmental authority (mining claim) has been given to the mining registrar under the *Environmental Protection Act 1994*. This sub-clause also provides specific timeframes in which the certificate of public notice can be issued for the various types of mining claim.

If the proposed mining claim is a surface alluvium (gold or tin) mining claim to which part 14 division 2 applies then the certificate cannot issue until at least 3 months have passed since the giving of the notice required under *section 444* or a consultation agreement under division 2 has been reached.

If the proposed mining claim is a mining claim other than a surface alluvium (gold or tin) mining claim to which, under *sections 459* or *462,* part 17 division 3 or 4 applies then the certificate cannot issue until at least 4 months have passed since the giving of the notice required under *section 616* or *652* or a negotiated agreement under part 17 division 3 or 4 has been reached.

Sub-clause (2) of *Section 64A* requires the mining registrar to fix the last day set for the receipt of objections and to give the applicant for the mining claim a certificate of public notice in the approved form and to give the EPA administering authority a copy of the certificate.

Sub-clause (3) of *Section 64A* provides for the last day set for the receipt of objections to be at least 28 days after the certificate of public notice is given to the applicant.

Sub-clause (4) of *Section 64A* prescribes the information that must be contained in the certificate of public notice.

Sub-clause (5) of *Section 64A* requires the mining registrar to post and keep posted at the registrar's office a copy of the certificate until the last day set for the receipt of objections.

Section 64B provides that the applicant must post a copy of the certificate on the datum post of the mining claim, engrave the datum post with the number of the mining claim and give copies of the certificate to each owner of the relevant land including any other land used for access to the tenement and the relevant Local Authority.

Section 64C requires the applicant by a specified time to lodge a declaration under the provisions of the *Oaths* Act 1867 that he has complied with all the foregoing provisions of *Section 64B.* The section also provides that no action can be taken to proceed the application until the forementioned Declaration has been lodged.

Section 64D provides for the applicant to be under a continuing obligation to notify the relevant parties mentioned in *Section 64B(2)(c)* if, after the last objection day but before the hearing day for the application, the applicant gives the mining registrar any additional document about the application.

Amendment of s 72 (Mining registrar to fix hearing date)

Clause 76 amends existing provisions by including an administrative timeframe in which the mining registrar must complete actions under this section. The amendment ensures that the mining registrar must within 5 business days after the last date that objections may be lodged set a date for the hearing of the application in the Land and Resources Tribunal. He must, within 5 business days, of setting the hearing date notify all objectors and the applicant of that date.

Amendment of s 73 (Rejection of application for grant of mining claim for noncompliance)

Clause 77 amends existing provisions to ensure that the applicant and the EPA administering authority are advised of the rejection of the prospecting permit and the reasons for it within 5 business days after the mining register makes that decision.

Amendment of s 74 (Grant of mining claim to which no objection is lodged)

Clause 78 amends existing provisions to ensure that the mining registrar gives the holder and the EPA administering authority written notice of the grant within 5 business days after the grant of the mining claim

Amendment of s 75 (Mining registrar may refer application for grant of mining claim to tribunal)

Clause 79 amends existing provisions to ensure that the mining registrar must, within 5 business days after setting the date, give the EPA administering authority and the applicant written notice of the referral and date of hearing.

Amendment of s 76 (Reference of application to tribunal if consent of reserve's owner is not given)

Clause 80 amends existing provisions to ensure that the mining registrar must, within 5 business days after fixing the day for hearing in the tribunal, give the EPA administering authority and the owner of the reserve written notice of the referral and date of hearing.

Amendment of s 80 (Grant of mining claim at instruction of tribunal or with consent of Governor in Council)

Clause 81 Amends existing provisions to ensure that the mining registrar must, within 5 business days after the grant of the mining claim, give the EPA administering authority and the applicant written notice of the grant.

Amendment of s 81 (Conditions of mining claim)

Clause 82 deletes rehabilitation conditions from Section *81(1)(e)* & *(f)* as all rehabilitation requirements for mining claims are now contained in the *Environmental Protection Act 1994*. The clause also inserts the new condition that the holder of the claim must carry out improvement restoration for the mining claim.

A new *section 81 (2A)* has also been inserted to ensure that a condition must not be determined, imposed or prescribed under the provisions of the *Mineral Resources Act 1989* if that condition is the same, or substantially the same, or inconsistent with a relevant environmental condition imposed under the *Environmental Protection Act 1994* for the claim.

Section 81(5) of the *Mineral Resources Act 1989* is deleted as these provisions are now contained in the *Environmental Protection Act 1994*.

Amendment of s 82 (Variation of conditions of mining claim)

Clause 83 inserts a provision that where any of condition of a mining claim is varied the condition so varied must not be the same, or substantially the same, or inconsistent with a relevant environmental condition for the mining claim imposed under the *Environmental Protection Act 1994*.

The Clause also provides that the mining registrar must, within 5 business days after a variation under this section is approved, give the EPA administering authority written notice of the variation.

Amendment of s 83 (Provision of security)

Clause 84 amends existing provisions and clarifies that the provision of security for a mining claim required under the *Mineral Resources Act 1989* is no longer required for rehabilitation of the environment but can be used for the restoration of any damage to pre-existing improvements for the land the subject of the mining claim.

Amendment of s 89 (Reasons for rejection of application for grant of mining claim)

Clause 85 provides that the mining registrar must, within 5 business days after the a rejection of an application for a mining claim, give the applicant and the EPA administering authority written notice stating the reasons for the decision.

Amendment of s 93 (Renewal of mining claim)

Clause 86 provides that the mining registrar must, within 5 business days after the day the application for the renewal of a mining claim is made or when the mining registrar is satisfied under section 93(3), give the EPA administering authority a copy of it.

Amendment of s 94 (Reasons for rejection of application for renewal of mining claim)

Clause 87 provides that the mining registrar must, within 5 business days after rejecting an application for the renewal of a mining claim, give the holder written notice of the decision and the reasons for it.

Amendment of s 96 (Assignment etc. of mining claim)

Clause 88 provides that the mining registrar must, within 5 business days after an assignment of a mining claim is lodged, give the EPA administering authority a copy of it.

Amendment of s 105 (Mining for other minerals)

Clause 89 provides that the mining registrar must, within 5 business days after approving an application to mine other minerals, give the EPA administering authority written notice of the approval.

Amendment of s 106 (Contravention by holder of mining claim)

Clause 90 provides that the mining registrar must, within 5 business days after the cancellation of a mining claim, give the EPA administering authority written notice of the cancellation.

Amendment of s 107 (Surrender of mining claim)

Clause 91 removes the requirement for the holder of a mining claim to lodge a final rehabilitation report in respect of the land surrendered from the mining claim. The requirement for rehabilitation reports has now been transferred to the *Environmental Protection Act 1994*. Due to the deletion of those rehabilitation requirements this clause also inserts new provisions requiring the mining registrar to be satisfied, before the acceptance of any surrender, that improvement restoration has been satisfactorily carried out by the holder under this Act and that the relevant environmental authority (mining claim) has been cancelled or surrendered under the *Environmental Protection Act 1994*.

The Clause also provides that the mining registrar must, within 5 business days after a notice of surrender is lodged, give the EPA administering authority a copy of such notice.

Amendment of s 108 (Abandonment of application for mining claim)

Clause 92 provides that the mining registrar must, within 5 business days after the abandonment of a mining claim, give the EPA administering authority written notice of the abandonment.

Replacement of s 109 (Rehabilitation of land covered by mining claim) with new Section 109 (Improvement restoration for mining claim)

Clause 93 removes all reference to rehabilitation from s*ection 109* of the Act by deleting the current provisions and inserting in their stead provisions for the carrying out of improvement restoration by the holder of the mining claim.

Amendment of s 116 (Appeals about mining claims)

Clause 94 removes all reference to rehabilitation from the appeal mechanism of *section 116* of the Act and inserts in its stead a provision for an appeal against a decision of the mining registrar about the carrying out of improvement restoration by the holder of the mining claim.

Amendment of s 123 (Property remaining on former mining claim may be sold etc.)

Clause 95 expands the current order of priority for the utilisation of the proceeds of a sale conducted by a mining registrar under *section 123* of the Act. The amendment provides for the utilisation of proceeds of such a sale towards the cost of rehabilitation under the *Environmental Protection Act 1994*. The order of priority for such utilisation is detailed as—

- payment of the expenses of the sale;
- the cost of rectifying actual damage where security is not available;
- payment of moneys due to the Crown;
- any costs or expenses under the *Environmental Protection Act 1994*, section 118(1) for a relevant environmental authority (mining claim);
- any other amounts owing to the state under the *Environmental Protection Act 1994* for a relevant environmental authority (mining claim);
- payments to Local Authorities;
- amounts owing to a mortgagee; and
- payment to the former holder

Amendment of s 129 (Entitlements under exploration permit)

Clause 96 removes those provisions dealing with the disposal of refuse (including human waste) and rubbish in a safe and sanitary manner by deleting subsection (16) from *Section 129.* These provisions are now incorporated in the *Environmental Protection Act 1994*. A new Section 129(16) has been inserted to confirm that the rights of the holder relate and are taken to have always have related, to the whole of the land to which the permit applies.

Amendment of s 133 (Application for exploration permit)

Clause 97 provides that the chief executive must, within 5 business days after the receiving an application for an exploration permit, give the EPA administering authority a copy of it. Where the application is a competitive application under *section 134A* of the Mineral Resources Act the period is extended to 10 business days.

Amendment of s 137 (Grant of exploration Permit)

Clause 98 inserts a provision that ensures that the chief executive must, within 5 business days after making a grant or refusal of an exploration permit, give the EPA administering authority written notice of the grant or refusal.

Amendment of s 139 (Periodic reduction in land covered by exploration permit for mineral other than coal)

Clause 99 provides that the chief executive must, within 5 business days after a reduction in the land is accepted, give the EPA administering authority written notice of the reduction.

Amendment of s 140 (Periodic reduction in land covered by exploration permit for coal)

Clause 100 provides that the chief executive must, within 5 business days after a reduction in the land is accepted, give the EPA administering authority written notice of the reduction.

Amendment of s 141 (Conditions of exploration permit)

Clause 101 deletes environmental rehabilitation conditions from *Section 141(1)(b)* and *(c)* as all rehabilitation requirements for exploration permits are now contained in the *Environmental Protection Act 1994*. The clause also inserts the new condition that the holder of the permit must carry out improvement restoration for the exploration permit.

A new section *141 (2A)* has been inserted to provide that where any variation of the conditions attaching to an exploration permit is approved by the minister, the chief executive must, within 5 business days after the Minister makes such variation, give the EPA administering authority written notice of the variation.

Section 141(5) of the *Mineral Resources Act 1989* is deleted as these provisions are now contained in the *Environmental Protection Act 1994*.

A new *Section 141(6)* has also been inserted to ensure that a condition must not be determined, imposed or prescribed under the provisions of the *Mineral Resources Act 1989* if that condition is the same, or substantially the same, or inconsistent with a relevant environmental condition imposed under the *Environmental Protection Act 1994* for the exploration permit

Omission of sections 142 and 143

Clause 102 deletes Sections 142 and 143 from the *Mineral Resources Act 1989* as all environmental impact statement requirements for exploration permits are now contained in the *Environmental Protection Act 1994*.

Amendment of s 144 (Provision of security)

Clause 103 amends existing provisions and clarifies that the provision of security for a exploration permit required under the *Mineral Resources Act 1989* is no longer required for rehabilitation of the environment but can be used for the restoration of any damage to pre-existing improvements on the land the subject of the exploration permit

Amendment of s 147 (Renewal of exploration permit)

Clause 104 provides that the chief executive must, within 5 business days after the day the application for the renewal of an exploration permit is received, give the EPA administering authority a copy of it.

Amendment of s 151 (Assignment of exploration permit)

Clause 105 provides that the chief executive must, within 5 business days after an assignment of an exploration permit is approved, give the EPA administering authority written notice of the approval.

Amendment of s 159 (Abandonment of application for exploration permit)

Clause 106 provides that the chief executive must, within 5 business days after the abandonment of an exploration permit, give written notice of it to the EPA administering authority.

Amendment of s 160 (Contravention by holder of exploration permit)

Clause 107 provides that the chief executive must, within 5 business days after the cancellation of an exploration permit, give written notice of it to the EPA administering authority.

Amendment of s 161 (Surrender of exploration permit)

Clause 108 removes the requirement for the holder of an exploration permit to lodge a final rehabilitation report in respect of the land surrendered from the exploration permit. The requirement for rehabilitation reports has now been transferred to the *Environmental Protection Act 1994.* Due to the deletion of those rehabilitation requirements this clause also inserts new provisions requiring the Minister to be satisfied, before the acceptance of any surrender, that improvement restoration has been satisfactorily carried out by the holder under this Act and that the relevant environmental authority (exploration permit) has been cancelled or surrendered under the *Environmental Protection Act 1994.*

The Clause also provides that the chief executive must, within 5 business days after a notice of surrender is lodged, give a copy of it to the EPA administering authority.

Omission of s 165 (Holder of exploration permit to rehabilitate land)

Clause 109 deletes *Section 165* from the *Mineral Resources Act 1989* as all rehabilitation requirements for exploration permits are now contained in the *Environmental Protection Act 1994*

Amendment of s 166 (Rehabilitation of land covered by exploration permits)

Clause 110 removes all reference to rehabilitation from section the Section 166 of the Mineral Resources Act 1989 by deleting the current provisions and inserting in their stead provisions for the carrying out of improvement restoration by the holder of the exploration permit.

Amendment of s 181 (Obligations and entitlements under mineral development licence)

Clause 111 removes those provisions dealing with the disposal of refuse (including human waste) and rubbish in a safe and sanitary manner by deleting *section 181(19)*. These provisions are now incorporated in the *Environmental Protection Act 1994*. A new Section 181 (19) has been inserted to confirm that the rights of the holder relate and are taken to have always have related, to the whole of the land comprised in the licence.

Amendment of s 183 (Application for mineral development licence)

Clause 112 removes the requirement for an applicant to provide a statement containing proposals to protect the environment and for the progressive and final rehabilitation of the land by deleting Section *183(m).* These requirements are now required under the *Environmental Protection Act 1994.*

The clause also provides that the chief executive must within 5 business days after the receiving an application for a mineral development licence from the mining registrar, give the EPA administering authority a copy of it. Where the application is a competitive application under *section 185* of the *Mineral Resources Act 1989* the period is extended to 10 business days.

Amendment of s 186 (Minister may grant or reject application for mineral development licence)

Clause 113 inserts a provision that ensures that the chief executive must, within 5 business days after making a grant or rejection of a mineral development licence, give the EPA administering authority written notice of the grant or rejection.

Amendment of s 189 (Abandonment of application for mineral development licence)

Clause 114 provides that the mining registrar must, within 5 business days after the abandonment of an application for a mineral development licence, give written notice of it to the EPA administering authority.

Amendment of s 190 (Provision of security)

Clause 115 amends existing provisions and clarifies that the provision of security for a mineral development licence required under the Mineral Resources Act 1989 is no longer required for rehabilitation of the environment but can be used for the restoration of any damage to pre-existing improvements on the land the subject of the mineral development licence.

Amendment of s 194 (Conditions of mineral development licence)

Clause 116 deletes environmental rehabilitation conditions from *Section 194(1)(b)* and (c) as all rehabilitation requirements for mineral development licences are now contained in the *Environmental Protection Act 1994*. The clause also inserts the new condition that the holder of the licence must carry out improvement restoration for the mineral development licence.

Section 194(1)(g)(iii) of the *Mineral Resources Act 1989* requiring that the holder must provide an environmental management plan for the activities on the licence is deleted as these provisions are now contained in the *Environmental Protection Act 1994*.

A new *section 194 (2A)* has been inserted to provide that where any variation of the conditions attaching to a mineral development licence is approved by the minister, the chief executive must, within 5 business days after the Minister makes such variation, give the EPA administering authority written notice of the variation.

Section 194(5) of the *Mineral Resources Act 1989* is deleted as these provisions are now contained in the *Environmental Protection Act 1994*.

A new *Section 194(5A)* has also been inserted to ensure that a condition must not be determined, imposed or prescribed under the provisions of the *Mineral Resources Act 1989* if that condition is the same, or substantially the same, or inconsistent with a relevant environmental condition imposed under the *Environmental Protection Act 1994* for the mineral development licence.

Omission of s 195 and s 196

Clause 117 deletes *Sections 195* and *196* from the *Mineral Resources Act 1989* as all environmental impact statement requirements for mineral development licences are now contained in the *Environmental Protection Act 1994.*

Amendment of s 197 (Renewal of mineral development licence)

Clause 118 provides that the chief executive must, within 5 business days after the day the application for the renewal of a mineral development licence is received, give the EPA administering authority a copy of it.

Amendment of s 198 (Assignment etc. of mineral development licence)

Clause 119 provides that the chief executive must, within 5 business days after an assignment or mortgage of a mineral development licence is lodged, give the EPA administering authority a copy of it.

Amendment of s 208 (Adding other minerals

Clause 120 provides that the mining registrar must, within 5 business days after approving an application to add other minerals to the licence, give the EPA administering authority written notice of the approval.

Amendment of s 209 (Contravention by holder of mineral development licence)

Clause 121 provides that the chief executive must, within 5 business days after the cancellation of an exploration permit, give written notice of it to the EPA administering authority.

Amendment of s 210 (Surrender of mineral development licence)

Clause 122 provides that the chief executive must, within 5 business days after a notice of surrender is lodged, give a copy of it to the EPA administering authority.

This clause also removes the requirement for the holder of a licence to lodge a final rehabilitation report in respect of the land surrendered from the mineral development licence. The requirement for rehabilitation reports has now been transferred to the *Environmental Protection Act 1994.* Due to the deletion of those rehabilitation requirements this clause also inserts new provisions requiring the Minister to be satisfied, before the acceptance of any surrender, that improvement restoration has been satisfactorily carried out by the holder under this Act and that the relevant environmental authority (mineral development) has been cancelled or surrendered under the *Environmental Protection Act 1994.*

Omission of s 213 (Holder of mineral development licence to rehabilitate land)

Clause 123 deletes Section 213 from the *Mineral Resources Act 1989* as all rehabilitation requirements for mineral development licences are now contained in the *Environmental Protection Act 1994*

Amendment of s 214 (Rehabilitation of land covered by mineral development licence)

Clause 124 removes all reference to rehabilitation from *Section 214* of the *Mineral Resources Act 1989* by deleting the current provisions and inserting in their stead provisions for the carrying out of improvement restoration by the holder of the mineral development licence.

Amendment of s 230 (Plant remaining on former mineral development licence may be sold etc.)

Clause 125 expands the current order of priority for the utilisation of the proceeds of a sale conducted by a mining registrar at the direction of the Minister under *section 230* of the *Mineral Resources Act 1989*. The amendment provides for the utilisation of proceeds of such a sale towards the cost of rehabilitation under the *Environmental Protection Act 1994*. The order of priority for such utilisation is detailed as-

- payment of the expenses of the sale;
- the cost of rectifying actual damage where security is not available;
- payment of moneys due to the Crown;
- any costs or expenses under the *Environmental Protection Act 1994*, *section 118(1)* for a relevant environmental authority (mineral development);
- any other amounts owing to the state under the *Environmental Protection Act 1994* for a relevant environmental authority (mineral development);
- payments to Local Authorities;
- amounts owing to a mortgagee; and
- payment to the former holder

Amendment of s 234 (Governor in Council may grant mining lease)

Clause 126 provides that the mining registrar must, within 5 business days after the being notified of the grant of a mining lease, give written notice of the grant to the EPA administering authority.

Amendment of s 235 (Entitlements of holder of mining lease)

Clause 127 inserts a new provision to confirm that the rights of the holder relate and are taken to have always have related, to the whole of the land and surface area comprised in the tenement

Amendment of s 236 (Entitlements to use sand, gravel and rock)

Clause 128 provides that the EPA Administering Authority will provide environmental conditions for all activities on a mining lease.

Amendment of s 237 (Drilling and other activities on land not included in surface area)

Clause 129 provides that the mining registrar must, within 5 business days after the application is made, give a copy of it to the EPA administering authority.

Amendment of s 245 (Application for grant of mining lease)

Clause 130 provides that the mining registrar must, within 5 business days after the application is made, give a copy of it to the EPA administering authority.

Amendment of s 250 (Rejection of application by mining registrar)

Clause 131 provides that the mining registrar must, within 5 business days after the application is rejected or an appeal under this section is decided or ended, give written notice of the event to the EPA administering authority.

Amendment of s 252 (Certificate of application etc.)

Clause 132 amends the existing provisions by reducing the current status of the Certificate of Application. The Certificate of Application will no longer direct the applicant to advertise the proposed mining lease for public submissions and objections. The certificate will acknowledge the receipt of the application and the fact that the application can proceed. It will also ensure that sufficient information on the proposal is available for negotiations with native title parties to commence. The issue of the Certificate of Application by the mining registrar is not dependent on the assessment level decision by the Environmental Protection Agency.

Following the issue of the certificate the applicant will be required to give each relevant landowner a copy of both the certificate and the application for the mining lease other than any part of it that states the applicant's financial and technical resources. The giving of the certificate and the application must be done within 7 days of the signing of the certificate by the mining registrar. The mining registrar may by a notice in writing to the applicant decide a way for the applicant to give the documents mentioned. This may be by publishing either the documents or a notice about the documents in a stated way.

Also the section is amended to provide for the mining registrar to extend, at any time, the period during which the landowner can be notified.

Insertion of new sections 252A to 252D

Clause 133 inserts new *sections 252A, 252B, 252C* and *252D* to provide for the issue and publication of a Certificate of Public Notice in respect of a mining lease. The Certificate of Public Notice is a new initiative and has been introduced to enhance the integration of inter-agency processes. The certificate will be issued only when the draft environmental authority is complete and native title negotiations have reached an appropriate stage.

Section 252A (1) provides for the mining registrar to issue the Certificate of Public Notice only if there has been compliance with the provisions of the *Mineral Resources Act 1989*. The issue of the Certificate of Public Notice can only occur if a Certificate of Application has already been issued and endorsed and the draft environmental authority for the relevant environmental authority (mining lease) has been given to the mining registrar under the *Environmental Protection Act 1994*. This sub-clause also provides specific timeframes in which the Certificate of Public Notice can be issued to comply with the alternative State provisions.

Section 252A(2) requires that the mining registrar must, within 5 business days of the issue of the certificate, give both the applicant for the mining lease a Certificate of Public Notice in the approved form and the EPA administering authority a copy of the certificate. The mining registrar must also within the 5-day period fix the last day set for the receipt of objections.

Section 252A(3) provides for the last day set for the receipt of objections to be at least 28 days after the Certificate of Public Notice is given to the applicant.

Section 252A(4) prescribes the information that must be contained in the Certificate of Public Notice.

Section 252A(5) requires the mining registrar to post and keep posted at the registrar's office a copy of the Certificate until the last day set for the receipt of objections.

Section 252B outlines the applicant's obligations with respect to the issue of the certificate of public notice. The section provides that the applicant must:

- post a copy of the certificate on the datum post of the mining lease
- engrave the datum post with the number of the mining lease
- give a copy to each owner of the relevant land including any other land used for access to the tenement
- give a copy to each holder or applicant for an exploration permit or mineral development licence over the land for a mineral other than a mineral to which the proposed mining lease relates
- give a copy to the relevant Local Government.

The section also details the requirements for the advertisement of the certificate in an approved newspaper circulating generally in the area of the relevant land. The applicant must:

- publish a copy of the certificate or a notice in the approved form about the certificate;
- if a map or sketch plan has been approved for the publication a copy of the map or sketch plan.

The publication of the certificate must take place at least 21 days before the last objection day stated in the certificate or at an approved shorter number of days.

Section 252B also contains definitions for the terms "approved" and "notice period" applicable to this provision.

Section 252C requires the applicant, within a specified time, to lodge a declaration under the provisions of the *Oaths Act 1867* that he has complied with all the foregoing provisions of *Section 252B.* The section also provides that no action can be taken by the tribunal to make a final recommendation to the Minister about the application other than a recommendation to reject the

application. The tribunal may also refuse to hear any matter concerning the application until the aforementioned Declaration has been lodged.

Section 252D provides for the applicant to be under a continuing obligation to notify the relevant parties mentioned in *Section 252B(1)(c)* if, after the last objection day but before the hearing day for the application, the applicant gives the mining registrar any additional document about the application

Amendment of s 253 (Reissue of certificate of application)

Clause 134 amends the current provisions by deleting any reference to the certificate of application and inserting a reference to the certificate of public notice.

Amendment of s 260 (Objection to application for grant of mining lease)

Clause 135 restates existing provisions in order to improve comprehension. The meaning of the section is not affected.

Omission of s 261, 262, 263 and 264

Clause 136 deletes *Sections 261, 262, 263 and 264* from the *Mineral Resources Act 1989* as all environmental impact statement requirements for mining leases are now contained in the *Environmental Protection Act 1994*.

Amendment of s 265 (Mining registrar to fix hearing date)

Clause 137 amends existing provisions by including an administrative timeframe in which the mining registrar must complete actions under this section. The amendment ensures that the mining registrar must, within 5 business days after the last date that objections may be lodged, set a date for the hearing of the application in the tribunal. He must, within 5 business days, of setting the hearing date notify all objectors and the applicant of that date.

Amendment of s 267 (Minister may reject application at any time)

Clause 138 amends existing provisions to ensure that the EPA administering authority is given written notice of a rejection within 5 business days after the mining register receives notice of the Minister's decision to reject.

Amendment of s 268 (Hearing of application for grant of mining lease)

Clause 139 amends existing provisions by omitting subsection (8) and inserting a new subsection (11). The omitted provisions dealing with environmental impacts are now contained in the *Environmental Protection Act 1994*. The inserted provision defines an application to include any additional document about the application given by the applicant pursuant to *Section 252D.*

Omission of s 270A (Minister to approve environmental management overview strategy)

Clause 140 deletes *Section 270A* from the *Mineral Resources Act 1989* as all provisions relating to the lodgement and approval of environmental management overview strategies for mining leases are now contained in the *Environmental Protection Act 1994.*

Amendment of s 271 (Minister to consider recommendation made in respect of application for grant of mining lease)

Clause 141 amends existing provisions to ensure that where the Minister wholly or partly rejects an application or gives a direction under subsection 2(c) then the Minister must, promptly give the applicant a written notice stating the action and the reasons for it. The mining registrar must then, within 5 business days after receiving advice of the action, give written notice of it to the EPA administering authority.

Amendment of s 272 (Minister may remit to tribunal for additional evidence)

Clause 142 provides for any notice of a hearing or further hearing directed by the Minister to be given to the EPA administering authority as well as all other persons who appeared or were represented at the original hearing.

Amendment of s 275 (Application for inclusion of surface land in mining lease)

Clause 143 amends existing provisions to reflect the new functions of the certificate of application and the certificate of public notice.

Amendment of s 276 (Conditions of mining lease)

Clause 144 deletes rehabilitation conditions from *Section 276(1)(b)* to *(d)* as all environmental and rehabilitation requirements for mining leases are now contained in the *Environmental Protection Act 1994*. The clause also inserts the new condition that the holder of the lease must carry out improvement restoration for the mining lease.

A new *section 276(4A)* has also been inserted to ensure that a condition must not be determined, imposed or prescribed under the provisions of the *Mineral Resources Act 1989* if that condition is the same, or substantially the same, or inconsistent with a relevant environmental condition imposed under the *Environmental Protection Act 1994* for the mining lease.

Amendment of s 277 (Provision of security)

Clause 145 amends existing provisions and clarifies that the provision of security for a mining lease required under the *Mineral Resources Act 1989* is no longer required for rehabilitation of the environment but can be used for the restoration of any damage to pre-existing improvements for the land the subject of the mining lease.

Insertion of new sections 283A and 283B

Clause 146 inserts new *sections 283A* and *283B* to enable the compensation agreement for a mining lease to be amended. The current provisions provide for compensation to be agreed between the landowner and lease holder or determined by the Court before a mining lease can be granted. There are no provisions to amend or vary an agreement during the term of the lease if this becomes necessary due to operational change. *Section 283A* provides a mechanism for the parties to the agreement to amend the compensation. The amended agreement is binding and replaces the original agreement only if it is filed with the mining registrar.

Section 283B enables either party to the compensation agreement to refer the matter to the tribunal for review. Once the matter is referred to the tribunal, the agreement will be confirmed as adequate or amended. In doing this, the tribunal is required to consider whether the parties have attempted to mediate or negotiate the agreement as well as the changes that have occurred to warrant amending the compensation. Compensation reviewed by the tribunal replaces the original compensation agreement.

Amendment of s 286 (Renewal of mining lease)

Clause 147 provides that the mining registrar must, within 5 business days after the day the application for the renewal of a mining lease is made or when the Minister is satisfied under subsection (3), whichever is the later, give the EPA administering authority a copy of it.

Amendment of s 287 (Reasons for rejection of application for renewal of mining lease)

Clause 148 provides that the Minister must, within 5 business days after rejecting an application for the renewal of a mining lease, give the applicant and the EPA administering authority written notice stating the decision and the reasons for it.

Omission of sections 291, 292 and 293

Clause 149 deletes *Sections 291, 292* and *293* from the *Mineral Resources Act 1989* as all provisions relating to the plan of operations and environmental audit statement, the amendment of a plan of operations and

the duration of the plan of operations in respect of mining leases are now contained in the *Environmental Protection Act 1994*.

Amendment of s 294 (Variation of conditions of mining lease)

Clause 150 inserts a provision to ensure that any variation of conditions in respect of a mining lease must be the same, or substantially the same, but not inconsistent with a relevant environmental condition for the mining lease imposed under the *Environmental Protection Act 1994*.

The Clause also provides that the mining registrar must, within 5 business days after receiving notice that the Governor in Council has made a variation under this section, give the EPA administering authority written notice of the variation.

Amendment of s 298 (Mining other minerals or use for other purposes)

Clause 151 provides that the mining registrar must, within 5 business days after receiving notice that the Minister has given approval to mine for other minerals or to use the lease for another purpose, give the EPA administering authority written notice of the approval.

Amendment of s 299 (Consolidation of mining leases)

Clause 152 provides that the mining registrar must, within 5 business days after the grant of a consolidated mining lease, give the EPA administering authority written notice of the grant.

Amendment of s 300 (Assignment etc. of mining lease or application therefor)

Clause 153 provides that the mining registrar must, within 5 business days after an assignment of a mining lease is lodged, give the EPA administering authority a copy of the assignment.

Amendment of s 307 (Abandonment of application for the grant of a mining lease)

Clause 154 provides that the mining registrar must, within 5 business days after an abandonment or partial abandonment of an application is lodged, give written notice of it to the EPA administering authority.

Amendment of s 308 (Contravention by holder of mining lease)

Clause 155 provides that the mining registrar must, within 5 business days after the cancellation of the mining lease takes effect, give written notice of it to the EPA administering authority.

Amendment of s 309 (Surrender of mining lease)

Clause 156 provides that the mining registrar must, within 5 business days after a notice of surrender or partial surrender is lodged, give written notice of it to the EPA administering authority.

The clause also removes from the existing provisions all references to rehabilitation. These are now contained in the *Environmental Protection Act 1994*. Additional provisions have been included to refer to the need for the holder to carry improvement restoration for the mining lease. It is also now a requirement that the Minister be satisfied, before a surrender can be accepted that the relevant environmental authority (mining lease) has been cancelled or surrendered under the *Environmental Protection Act 1994*.

Amendment of s 314 (Property remaining on former mining lease may be sold)

Clause 157 expands the current order of priority for the utilisation of the proceeds of a sale conducted by a mining registrar at the direction of the Minister under *section 314* of the *Mineral Resources Act 1989*. The amendment provides for the utilisation of proceeds of such a sale towards the cost of rehabilitation under the *Environmental Protection Act 1994*. The order of priority for such utilisation is detailed as-

- payment of the expenses of the sale;
- the cost of rectifying actual damage where security is not available;

- payment of moneys due to the Crown;
- any costs or expenses under the *Environmental Protection Act 1994*, section 118(1) for a relevant environmental authority (mining lease);
- any other amounts owing to the state under the *Environmental Protection Act 1994* for a relevant environmental authority (mining lease);
- payments to Local Authorities;
- amounts owing to a mortgagee; and
- payment to the former holder

Amendment of s 315 (Approval of additional activities upon mining lease application)

Clause 158 provides that the mining registrar must, within 5 business days after an application for an additional activity approval is made, give written notice of it to the EPA administering authority. The clause confirms existing policy and practice by providing that the Minister may grant an additional activity approval only if:

- the tribunal has made a recommendation under *section 269* or *270* about the relevant mining lease application; and
- compensation has been agreed or determined, under section *279* or *281*; and
- the Minister has sought and considered the views of an owner of a reserve if the application relates to a reserve.

Amendment of s 318 (Rehabilitation of land covered by mining lease)

Clause 159 deletes the existing *section 318* from the *Mineral Resources Act 1989* as all provisions relating to the rehabilitation of mining leases are now contained in the *Environmental Protection Act 1994.* The clause subsequently inserts a new *section 318* which provides for improvement restoration to be carried out by the holder on the termination of a mining lease other than a surrender under *section 309* or for the granting of a new mining lease over the land the subject of the terminated mining lease.

Where the Minister is not satisfied that the holder has carried out improvement restoration the Minister may give the holder written directions about the restoration required.

Amendment of s 319 (Effect on planning provisions)

Clause 160 deletes all references made to the *Local Government (Planning and Environment) Act 1990* and replaces them with references to the *Integrated Planning Act 1997*.

Amendment of s 343 (Seizure of minerals produced by or vehicles, machinery etc, used in unauthorised mining)

Clause 161 expands the existing authority of a mining registrar, field officer or other officer who seizes property to include the carrying out any improvement restoration considered by the mining registrar or officer to be appropriate for the land on which mining for the mineral had occurred.

Where property is seized and sold at public auction the amendments provide for the proceeds of such sale to be applied as follows:

- firstly, in payment of the expenses of the sale;
- secondly, in payment of the cost of seizure of, removal of and holding the subject property and the service and advertisement of any notice served or advertised under *section 343*;
- thirdly, in payment of the cost of any improvement restoration that is or is likely to be carried under *section 343(2)(d)*;
- fourthly, in payment of the cost of rehabilitation of land required as a result of the use of the subject property in contravention of this act or any authority granted under this act or any other act relating to mining or under the *Environmental Protection Act 1994*;
- fifthly, in payment of the balance of the proceeds to the owner of the subject property or, if after reasonable inquiry, the owner cannot be ascertained, to the public trustee as unclaimed moneys and the provisions of the *Public Trustee Act 1978* with respect to unclaimed moneys shall apply thereto.

Amendment of s 363 (Substantive jurisdiction)

Clause 162 inserts the words "or review" at *Section 363(2)(f)* to include the case where compensation has been reviewed by the tribunal as provided for in the new *Section 284B.*

Insert new section 391A (Restriction on decisions or recommendations about mining tenements)

Clause 163 inserts the requirement that a person may not make decisions or recommendations about mining tenements under this Act unless a relevant environmental authority has been issued. For this section "relevant environmental authority" means an environmental authority under the Environmental Protection Act for all activities authorised, or to be authorised under the tenement. It is also confirmed that this section does not apply to any decision or recommendation of the Land and Resources Tribunal.

Amendment of s 416A (Approval of forms)

Clause 164 provides for approved forms under the *Mineral Resources Act 1989* to be combined with and used with an approved form under the *Environmental Protection Act 1994* to cater for an integrated application process, and any other Act.

Amendment of s 417 (Regulations)

Clause 165 deletes the existing provisions contained in *sections 417(2)(e)* and *(f)* by removing any reference to matters of an environmental nature. New *sections 417(2)(e)* and *(f)* are inserted to provide for regulation making power in respect to any statement required under the provisions of *section 245 (1)(o)(iii)* and for the matters able to be considered by a mining registrar in deciding to accept such statements.

Amendment of s 669 (Referral of proposed mining lease to tribunal)

Clause 166 amends current provisions by recognising the role of the Environmental Protection Agency in the new EIS process. All environmental references in the *Mineral Resources Act 1989* are removed and have been inserted in the *Environmental Protection Act 1994*.

Insertion of new Part 19, Division 3 (Transitional provisions for Environmental Protection and Other Legislation Amendment Act 2000)

Clause 167 inserts new *sections 735, 736* and *737*.

Existing Act continues to apply for special agreement Acts

Section 735 excludes tenures granted under the relevant special agreement acts from the *Environmental Protection Act 1994* as amended.

Amendment of EMOS after grant of particular mining leases and before amending Act

Section 736 validates the amendment or purported amendment of an EMOS accepted or approved or purportedly accepted or approved by the Minister or the Department before the commencement of this act. This section expires the day after it commences and is also a law to which section 20A of the *Acts Interpretation Act 1954* applies.

Insertion of schedule

Clause 168 inserts a new schedule, dictionary, after part 19.

PART 5—AMENDMENT OF *NATURE CONSERVATION ACT 1992*

Act amended in part 5.

Clause 169 states that this part amends the Nature Conservation Act 1992.

Amendment of s39B (Chief executive may require EIS)

Clause 170 replaces section 39B(2) to provide for the EIS process under the *Environmental Protection Act 1994* if the use or stated use is a project to which chapter 2A, part 1 of that Act applies.

PART 6—AMENDMENT OF *TRANSPORT INFRASTRUCTURE ACT 1994*

Act amended in pt 6

Clause 171 states that Part 6A amends the *Transport Infrastructure Act 1994*.

Amendment of s233 (Continuation of certain by-laws and provisions of Harbours Act)

Clause 172 amends section 233 of the *Transport Infrastructure Act 1994* to extend the term of a transitional provision which was to expire on December 31, 2000 to December 31, 2002.

Certain provisions of the *Harbours Act 1955* dealing with coastal approvals have been continued under the provisions of Part 3—Savings and Transitional Provisions about Ports—of the *Transport Infrastructure Act 1994* until 31 December 2000. These provisions are expected to be superseded by proposed amendments of the *Coastal Protection and Management Act 1995* which would bring coastal approvals within the integrated development assessment system under the *Integrated Planning Act 1997.*

However, as the amendments may not be considered and passed by Parliament prior to 31 December 2000 it is necessary to extend the transitional provisions to allow the current provisions of the *Harbours Act 1955* to continue in force. The proposed amendments to the *Coastal Protection and Management Act 1995* will provide for the repeal of these transitional provisions.

Clause 173 extends a transitional provision of the *Transport Infrastructure Act 1994*. The effect of the provision is to continue in force certain provisions of the *Harbours Act 1955* until 31 December 2002. For further information refer to clause 128E above.

PART 7—MINOR AMENDMENTS OF ACTS

Acts amended in schedule

Clause 174 provides for minor amendments to the Acts in the schedule of minor amendments in the *Environmental Protection and other Legislation Amendment Act 2000.*