

# **ENVIRONMENTAL PROTECTION AND OTHER LEGISLATION AMENDMENT BILL 2002**

## **EXPLANATORY NOTES**

### **GENERAL OUTLINE**

#### **Short Title**

The short title of the Bill is the *Environmental Protection and Other Legislation Amendment Bill 2002*.

#### **Policy Objectives of the Legislation**

The policy objective of the Bill is to provide a better service to the administering authority's clients and achieve better environmental outcomes.

#### **Reasons for the Bill**

The Bill incorporates legislative changes necessary to improve the consistency, clarity and efficiency of the *Environmental Protection Act 1994* (the EP Act). The amendments will enable administering authorities to achieve better environmental outcomes with the introduction of consistent amendment, transfer and surrender provisions for all types of environmental authorities. Administrative efficiencies will also be achieved by other minor amendments to existing provisions.

Safety conditions imposed on referable dams containing hazardous wastes under the *Water Resources Act 1989* will be transferred under the provisions of the *Water Act 2000* to environmental authorities issued under the EP Act. The Bill ensures that conditions imposed under the *Water Resources Act 1989* can be amended so that environmental authorities are appropriately conditioned. Applications for new hazardous waste dams under the *Water Resources Act 1989* will be taken to be applications for a

new environmental authority under the EP Act upon commencement of the transitional provisions contained in the *Water Act 2000*.

### **Achieving the Objective**

The objective of the Bill will be achieved by enacting amendments to the Act that—

- Simplify the administration of environmental authorities under the EP Act by:
  - making consistent the application, amendment, transfer, surrender, suspension and cancellation of environmental authorities;
  - enabling holders of environmental authorities to nominate the anniversary day of their authority to suit reporting and business needs; and
  - providing clear processes to amend and transfer the whole or part of an integrated authority;
- Enable the administering authority to initiate an amendment to an environmental authority based on a relevant report by a recognised entity;
- Clarify provisions relating to:
  - the delegation of powers by the chief executive of the Environmental Protection Agency and the administering executive or local government chief executive officer; and
  - the transfer of safety conditions for hazardous dams from water licences under the *Water Resources Act 1989* to environmental authorities under the EP Act;
- Ensure consistent enforcement provisions, in particular, the ability of the administering authority to:
  - carry out an environmental audit of an approval for an environmentally relevant activity;
  - require an environmental investigation about environmental nuisance;

- penalise a person for not submitting an environmental management program as required; and
- make an environmental management program a condition of a level 2 approval.

Administrative efficiencies will also be achieved by other minor amendments to existing provisions.

### **Alternatives to the Bill**

Legislative amendment was considered to be the most effective and efficient way to achieve the foregoing objectives. The EP Act already contains a core regulatory framework for achieving environmental outcomes. The proposed amendments will complement, enhance and strengthen existing process and enforcement provisions, to achieve greater efficiencies and enhanced environmental outcomes for the Environmental Protection Agency and its clients.

### **Administrative costs and savings to Government**

The amendments will not impose further costs on either the EPA or other Government departments. The introduction of consistent dealings with environmental authorities is expected to result in administrative cost savings for Government.

### **Consistency with Fundamental Legislative Principles**

The Bill contains one potential Fundamental Legislative Principles issue in regard to retrospective commencement of Part 3. This is required to ensure continuity of licences and to save any undecided applications when a postponed section of the *Water Act 2000* commences on 13 September, 2002. The retrospective commencement will not adversely affect rights and liberties or impose new obligations. However it will benefit persons who may have an undecided application under the *Water Resources Act 1989*.

The Bill introduces new and modified administrative powers. Where rights and liberties or obligations depend on a decision made by the administering authority, review and appeal processes for dissatisfied persons are provided. The Bill includes the following new decisions that are subject to review and appeal by a dissatisfied person:

- Decision not to issue an integrated authority;
- Decision to issue an integrated authority different to the integrated authority applied for;
- Decision not to change an anniversary day.

### **Consultation**

The provisions of the Bill have been developed following more than twelve months of consultation with Government departments, Commerce Queensland, the Australian Industry Group, the Local Government Association of Queensland and the Queensland Conservation Council. All stakeholders have indicated support for the proposed amendments.

## **NOTES ON PROVISIONS**

### **PART 1—PRELIMINARY**

#### **Clause 1 Short title**

*Clause 1* states that the Bill may be cited as the *Environmental Protection and Other Legislation Amendment Bill 2002* (the Bill).

#### **Clause 2 Commencement**

*Clause 2* provides for when the Bill will commence.

Subclause (1) provides for retrospective commencement of Part 3 of the Bill to ensure that these amendments to the *Water Act 2000* will commence at the same time as the postponed section 1065 of the *Water Act 2000*. This section was postponed by the *Water Postponement Regulation 2001* until 13 September 2002.

Subclause (2) provides for other provisions of this Bill to commence on a date to be fixed by proclamation.

## **PART 2—AMENDMENT OF ENVIRONMENTAL PROTECTION ACT 1994**

### **Clause 3 Act amended in pt 2 and schedule**

*Clause 3* provides that part 2 of the Bill amends the *Environmental Protection Act 1994* (the Act). The schedule also includes minor amendments of the Act that are not policy changes.

### **Clause 4 Amendment of s 109 (Requirements for application)**

*Clause 4* inserts a new paragraph 109(c) to provide that an application to convert a licence to a level 1 approval must be accompanied by the existing fee prescribed in the *Environmental Protection Regulation 1998*, schedule 6.

### **Clause 5 Amendment of s 111 (Criteria for decision)**

*Clause 5* amends section 111 by removing subparagraph (iv), twice appearing. The amendment removes the requirement for the administering authority to consider any properly made submissions or views expressed in a conference in relation to an application to convert a licence to a level 1 approval. As an application for a conversion to a level 1 approval does not require public notification, the administering authority is not required to consider these criteria.

### **Clause 6 Amendment of s 115 (Information notice about decision on conversion application)**

*Clause 6* omits section 115(2) to remove the requirement for the administering authority to give a submitter for an application an information notice about a decision to grant the conversion application. As an application to convert a licence to a level 1 approval is not subject to public notification, a submitter is not required to make a submission about the conversion application.

## **Clause 7 Replacement of ch 4, pts 5 and 6**

*Clause 7* replaces chapter 4, parts 5 and 6. These amendments consist of a new heading for part 5 and replaces sections 116 to 128. The clause also inserts new sections 128A to 128P as follows:

## **PART 5—AMENDING ENVIRONMENTAL AUTHORITIES BY APPLICATION**

### ***Division 1— Making amendment application***

#### **Who may apply for amendment**

*Section 116* replaces the existing section 116. The provision applies consistent amendment processes to all types of non-mining environmental authorities. It also enables a uniform approach to administrative procedures, and increased flexibility for clients and administering authorities when changes in business circumstances occur. The holder of an environmental authority under this chapter may apply to amend the authority at any time. An amendment application may be made for a licence (with or without development approval), a provisional licence, a level 1 or 2 approval, including when these environmental authorities form part of an integrated authority.

#### **Exclusion from amendment under pt 5**

*Section 117* is a new provision. It states that an environmental authority condition requiring a financial assurance cannot be amended or discharged under part 5. A condition on a licence (with development approval) or a licence (without a development approval) about a financial assurance can only be amended or discharged under section 366. The exclusion ensures there is no confusion between these sections.

## **Requirements for amendment application**

*Section 118* has the same effect as the replaced section 117. The provision requires an amendment application to be in the approved form, supported by enough information to allow the administering authority to decide the application, and accompanied by the application fee prescribed under a regulation.

### *Division 2—Processing amendment applications*

## **Public notice may be required for amendment of licence (without development approval)**

*Section 119* replaces sections 34DK(1) to (5). The requirements have not changed. The section provides that the administering authority may give the applicant a written notice of its decision to apply sections 89D to 89J to an application (“public notice requirement”), to amend a licence (without development approval).

## **Public notice process**

*Section 120* replaces sections 34DK(6) and (7). It provides that if the administering authority decides to apply sections 89D to 89J for an amendment application, those sections apply to the application as if it was for a licence (without development approval). The number of days the applicant has to meet the public notification requirements under section 89E (previously section 34CC) has been extended from 10 days to 15 business days. This extended period will allow more time for the applicant to meet the requirements, and be more consistent with the number of days for an application for a licence (without a development approval).

The number of days the applicant has to give the administering authority a statutory declaration on the public notification requirements has also been amended. Under section 89G (previously section 34CE), the applicant now has 19 business days, as opposed to 7 days. This is to allow more time to provide a statutory declaration and is more consistent with the number of days for an application for a new licence (without development approval).

### **Deciding application**

*Section 121* replaces section 118. It provides that the administering authority must either grant or refuse an amendment application. The provision has not changed apart from a new subsection (2) and the equivalent use of the term “business days”.

Under the new subsection (2), the administering authority may, if it considers it necessary and desirable, also grant an amendment application subject to the applicant’s written agreement. This allows a more flexible approach to be taken by the administering authority in deciding an amendment application in consultation with the applicant.

Previously, if the holder of a licence or level 1 approval (without development approval) applies to amend the licence or approval, the administering authority can only grant or refuse the application in the terms it is made. If the applicant and/or the administering authority agree to make the amendment, the written agreement of the authority holder is required under the existing section 130(1)(a).

The policy intent of section 121(2) is to allow conditions to be varied or imposed under an application to amend the environmental authority within the context of the original conditioning powers. The new provision also enables both parties to conclude a mutually beneficial outcome, where the applicant initiated amendment process includes amendments suggested by the administering authority, and acceptable and agreed to by the authority holder.

### **Criteria for decision**

*Section 122* replaces sections 119 and 120. It provides that the administering authority may grant an amendment application if it is satisfied that the amendment is necessary and desirable. The administering authority must now consider the criteria under part 3 (Environmental authority applications) or part 4 (Conversion of licence to level 1 approval) for deciding an application for an environmental authority.

The policy intent for this amendment is to provide consistent decision-making processes for all types of environmental authorities.



### **Refusal on ground that replacement environmental authority needed**

*Section 123* is a new provision that allows the administering authority to refuse the amendment application on the grounds that it would be more appropriate for the applicant to apply for a new environmental authority to carry out the activity. However, the refusal of an amendment application on this ground, does not limit the grounds on which the application may be refused. This allows the administering authority greater flexibility to apply the appropriate provisions to differing business circumstances.

### ***Division 3—Miscellaneous provisions***

#### **Steps after making decision**

*Section 124* replaces section 121(1)(a) to (c). It provides that, if the administering authority decides to grant the amendment application, it must within 8 business days after its decision, amend the environmental authority, record particulars of the amendment in the appropriate register, and give the applicant a copy of the amended environmental authority. The provision has the same effect except that it has been extended to all types of environmental authorities.

#### **When amendment takes effect**

*Section 125* replaces section 122. It provides that a decision to amend an environmental authority takes effect on the latest of the following prescribed days:

- The day of the amendment;
- A later day stated in the amended authority;
- Another day agreed by the authority holder;
- If a public notice requirement was made for the application, and a submission was made about the application—the day after the review date.

The provision has the same effect except that it has been extended to all types of environmental authorities.

### **Information notice about decision**

*Section 126* replaces previous section 121(1)(d) and (2). It provides that where the administering authority makes a decision to refuse the amendment application, or a decision under the new section 121, (other than for an amendment agreed in writing by the applicant), it must give the applicant an information notice about the decision.

Section 126(1)(b) provides that the administering authority must provide an information notice when the administering authority amends the environmental authority in a stated way. The provision allows for best practice conditioning of an environmental authority. Section 126(2) provides that, if the applicant has agreed to the amendment in writing, an information notice is not required. Section 126(3) requires the administering authority to give an information notice to anyone who made a submission if there was public notice of the amendment application.

## **PART 6—DEALINGS WITH ENVIRONMENTAL AUTHORITIES**

The new heading for part 6 implements a new policy to apply consistent transfer, surrender, and other amendment processes to all types of environmental authorities by allowing dealings with environmental authorities, rather than just licences.

### ***Division 1—Required notice to proposed transferee***

Division 1 provides for the proposed transfer of environmental authorities.

### **Notice of disposal by environmental authority holder**

*Section 127* replaces previous section 123(1) and (2). It applies if the holder of an environmental authority under chapter 4 proposes to dispose of a business to someone else (“the proposed transferee”). Currently, only a seller of a business that is carrying out a level 1

environmentally relevant activity must notify the buyer that there is a licence attached to the business.

The new provision provides that before agreeing to dispose of the business, the holder of a licence (with development approval), a licence (without development approval), a level 1 approval, or a level 2 approval, must notify the proposed transferee in writing that the transferee must make a transfer application for the environmental authority or apply for a new environmental authority. A maximum of penalty of 50 penalty units applies for a contravention of this section.

### **Additional consequence of not giving notice**

*Section 128* replaces previous section 123(3) to (5). It applies if a notice of disposal is required because the holder of the environmental authority has not, in contravention of section 127(2), given the transferee notice that either a transfer application, or an application for a new authority, must be made.

The transferee may rescind the agreement before the earlier of the following to happen--completion or possession under the agreement.

The provision has the same effect as previous section 123(3) to (5).

## ***Division 2—Transfers***

Division 2 provides for the transfer of environment authorities.

### **Transfer only by approval**

*Section 128A* replaces previous section 124. It provides that an environmental authority under chapter 4 cannot be transferred unless a transfer application has been made to, and approved by the administering authority. Previously, the holder of a level 1 approval (with or without a development approval), a level 2 approval, or a licence (with development approval), could not transfer an environmental authority under this chapter to another person.

The policy intention is to introduce transfer processes that apply to all environmental authorities. This amendment will provide a uniform approach to the development of administrative procedures, increased flexibility and consistency for clients and administering authorities.

### **Requirements for transfer applications**

*Section 128B* specifies the requirements for a transfer application. The provision has the same effect as previous section 125.

### **Amendment application may accompany transfer application**

*Section 128C* is a new provision. It states that the holder of the environmental authority and the proposed transferee for an application to transfer an environmental authority may together, make an amendment application with the transfer application for an environmental authority.

The insertion of this section provides greater flexibility for the holder of an environmental authority and the proposed transferee. The new section is consistent with existing section 260(2) to (4), which deals with environmental authorities (mining activities).

### **Audit statement may be required**

*Section 128D* is a new provision. It states that the administering authority may, within 20 business days after a transfer application is made, require the environmental authority holder and the proposed transferee, to submit an audit statement for the environmental authority. An audit statement is not required for every application. The audit statement must be made by, or for, the environmental authority holder, and state the extent to which activities carried out under the environmental authority have complied with its conditions.

The audit statement will provide both the administering authority and the proposed transferee with information about the status of an environmental authority. The new section is consistent with section 261 (Environmental authorities (mining activities)). The audit statement is similar to a statutory declaration that authority conditions have been met. For most environmentally relevant activities, this should not require a third party environmental audit. A final rehabilitation report will not be required unless such a report is a condition of the approval to carry out the environmentally relevant activity.

No time limit has been set for the applicants to provide the administering authority with an audit statement.

### **Deciding application**

*Section 128E* is a new provision. It requires the administering authority to either approve or refuse the transfer application within the later of 20 business days after the application date (previous section 126) or, if an audit statement has been required under section 128D, 10 business days after the administering authority receives the audit statement.

### **Additional ground for refusal**

*Section 128F* is a new provision. It states that the administering authority may refuse a transfer application if the authority holder and the proposed transferee did not apply to amend the relevant environmental authority under section 128C(1), or the administering authority is satisfied that if the application were to be granted, a ground for amending the environmental authority under section 130 would exist.

This provision clarifies the administering authority's power to refuse an application if it recognizes that the environmental authority needs to be amended. The power to amend an authority is already available under chapter 4, part 7. However, section 128F will give the administering authority more flexibility if it considers an amendment is necessary, because of changes that are likely to occur because of the proposed transfer.

Subsection (2) provides that the administering authority's ability to refuse a transfer application is not limited. The provision is consistent with section 263 of the Act, which grants similar powers in relation to mining activities.

### **Steps after making decision**

*Section 128G* replaces previous section 127. It outlines the steps the administrative authority must follow after deciding a transfer application. The effect of the provision is similar to section 127 except that the transfer may now take effect on a day agreed by the transferee. This is consistent with section 125C, and provides greater flexibility for business.

If the administering authority refuses a transfer, it must within 8 business days after the decision is made, give the applicant for the transfer an information notice about the decision.

### ***Division 3—Surrenders***

#### ***Subdivision 1—General provisions for surrender***

#### **Surrender only by approval**

*Section 128H* replaces previous section 128. It provides that the surrender of an environmental authority may only occur if an application has been made under subdivision 2 (a “surrender application”), and the administering authority has approved the application.

Currently, the holder of a level 1 approval (without a development approval), a level 2 approval, or a licence (with development approval) cannot surrender these environmental authorities to an administering authority. In addition, these environmental authorities cannot be surrendered when an environmentally relevant activity ceases to be carried out. The policy intent is to introduce surrender processes that are applicable to all environmental authorities. The amendments will provide a uniform approach to the development of administrative procedures, and increased flexibility and consistency for clients and administering authorities.

Under the new provisions, an environmental authority holder is required to surrender an environmental authority through an approval process, and continue to be responsible for the conditions of the authority if the holder ceases an activity without fulfilling those conditions. The holder of an environmental authority under chapter 4 can apply to surrender the authority at any time.

The inclusion of a surrender process provides the holder of an environmental authority with the certainty of knowing when an environmental authority has been finalised. It also provides the administering authority with a mechanism to finalise an environmental authority and remove it from the relevant public register.

### **Surrender application must be for whole authority**

*Section 128I* is a new provision. It states that the surrender must only be for the whole of an environmental authority. An amendment is more appropriate if part of an authority is surrendered.

### **When surrender application required**

*Section 128J* is a new provision. It states that if an environmental authority holder under chapter 4 abandons the carrying out of an environmentally relevant activity, the holder must make a surrender application to the administering authority within 22 business days.

For this section, the holder is taken to have abandoned an activity to which a licence (with development approval) relates if the development approval lapses, or the application for the development approval is refused or the later of the following to happen:

- If the period to appeal against the refusal under the *Integrated Planning Act 1997* has ended; or
- The ending of any appeal against the refusal.

This section is consistent with section 270 (When surrender application required for mining activities), with relevant variations.

### **Notice by administering authority to make surrender application**

*Section 128K* is a new provision. It allows the administering authority to give a “surrender notice” to the holder of an environmental authority who has abandoned the environmentally relevant activity but has not made an application to surrender the authority.

The surrender notice requires the holder to make a surrender application within a stated period of at least 10 business days. An information notice about the authority’s decision must accompany the surrender notice. This section is consistent with section 271 (environmental authorities for mining activities), with relevant variations.

### **Failure to comply with surrender notice**

*Section 128L* is a new provision. It imposes a maximum penalty of 100 penalty units for a person who does not comply with a surrender

notice without a reasonable excuse. The administering authority will have the discretion of determining whether an excuse is reasonable.

This provision is consistent with section 272, which applies to mining activities.

### ***Subdivision 2—Making surrender application***

#### **Requirements for surrender application**

*Section 128M* is a new provision. It provides that an application for the surrender of an environmental authority must be made in a form approved by the administering executive. The application must be supported by enough information to help the administering authority decide the application. An audit statement for the environmental authority and the prescribed fee must accompany an application.

The environmental authority holder must make the audit statement, and state the extent to which the conditions of the authority have been complied with. This section is consistent with section 273 (surrender application (mining activities)), except that a final rehabilitation report will not be required.

### ***Subdivision 3—Processing surrender application***

#### **Deciding application**

*Section 128N* is a new provision. It requires the administering authority to consider, and either approve or refuse each surrender application, within 20 business days after it receives the application. This section is consistent with section 277, which applies to mining activities.

#### **Criteria for decision**

*Section 128O* is a new provision. It specifies the criteria that the administering authority must comply with, or consider, in deciding a surrender application. The administering authority must: comply with any environmental protection policy requirement, and must consider—



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- The standard criteria (defined in the schedule 3 dictionary), and
- The audit statement for the environmental authority being surrendered, and
- Any other matter prescribed under an environmental protection policy, or a regulation.

The administering authority may grant the surrender application only if it is satisfied that:

- The conditions of the environmental authority have been complied with; or
- The land to which the application relates has been satisfactorily rehabilitated; or
- The land will be satisfactorily rehabilitated under an environmental management program it has approved; or
- A suitability statement has been given for the land, and the land has been removed from the environmental management register; or a site management plan has been approved for the land.

However, if the conditions have not been complied with, the following options are available to the administering authority if:

- The conditions have not been complied with due to time constraints or practicalities—the administering authority may grant the surrender application, if it considers the land has been satisfactorily rehabilitated;
- The site has not been satisfactorily rehabilitated—the administering authority may approve an environmental management program to deal with any residual issues;
- There are any outstanding contaminated land issues—the administering authority may grant the surrender application, if a suitability statement given for the land has resulted in the land being removed from the environmental management register, or a site management plan has been approved for the land.

This section is consistent with section 278 about environmental authorities (mining activities), except that a final rehabilitation report will not be required.

### **Steps after making decision**

*Section 128P* is a new provision that requires the administering authority to take certain actions within 10 business days after deciding a surrender application. If the decision is to approve the application, it must record particulars of the surrender in the appropriate register, and give the applicant written notice of the decision. If, on the other hand, the decision is to refuse the application, the applicant must be given an information notice about the decision. An information notice is defined in the schedule 3 Dictionary, as including a statement about the administering authority's decision, the reasons for it, and the review or appeal options that are available.

This section is consistent with section 279 on environmental authorities (mining activities).

### **Clause 8 Amendment of s 130 (Other amendments)**

*Clause 8* amends section 130 to implement the policy intent of applying consistent amendment provisions to all environmental authorities. Subsection 130(1) is amended to allow the administering authority to amend a licence (with development approval), level 1 approval (with development approval), or a level 2 approval. Currently these environmental authorities cannot be amended.

Subsection 130(2) is also amended so the administering authority can amend the conditions of a licence or approval on the basis of information contained in a report by a "recognised entity". A recognised entity is defined as any of the following:

- The administering authority;
- The department administering the *Fisheries Act 1994* or *Water Act 2000*;
- A local government;
- A public authority;
- An agency established under a corresponding law with similar functions to those of the chief executive, for example, equivalent agencies in NSW or Victoria;
- A ministerial council established by the Council of Australian Governments;

- The CSIRO;
- A Commonwealth funded cooperative research centre; or
- An Australian university.

The report by a recognised entity is also required to be relevant to the environmental authority or an activity carried out under it, and to be accepted by the chief executive of the Environmental Protection Agency. The legislation will require accepted reports to be listed on a public register maintained by the Agency.

### **Clause 9 Amendment of s 131 (Conditions)**

*Clause 9* amends Section 131 to provide consistency in the way the administrative authority deals with environmental authorities. The policy intention of section 131(1) is to enable level 2 approvals to be cancelled or suspended.

The administering authority will also be able to suspend or cancel an environmental authority if the holder has not complied with a surrender notice.

### **Clause 10 Omission of ss 143 and 144**

*Clause 10* omits section 143 because consistent dealings with all types of environmental authority negate the need for this provision. Section 144 is also omitted, because the notification of ceasing activities is superseded by the surrender application process.

### **Clause 11 Amendment of s 145 (Death of licence holder)**

*Clause 11* amends section 145 to provide for consistency in dealings between environmental authorities when a licence holder dies. The provision now applies to level 1 and 2 approval holders. Accordingly, when a holder dies, the personal representative of the holder's estate will be taken to be the holder for 6 months from the date of death. On the application of the personal representative, the administering authority may extend this period.

**Clause 12 Replacement of ch 6, pt 1 (Integrated authorities)**

*Clause 12* inserts a new heading and chapter 6, part 1 as follows.

**PART 1—INTEGRATED AUTHORITIES**

*Division 1—Obtaining integrated authority*

**Integrated authority may be issued**

Section 311 replaces current section 311, with changes. Subsection (1) states that the administering authority may accept an application (subject to section 312 (requirements for integrated authority application), for different environmentally relevant activities carried out by the applicant or for environmentally relevant activities carried out by the applicant at different places.

Subsection (2) is a new provision that clarifies that the holder of existing environmental authorities may apply to add these environmental authorities to an integrated authority.

Subsection (3) has the same meaning as the previous section 311(3) and clarifies that any type and combination of environmental authority (including for mining activities) can be included on an integrated authority.

Subsection (4) is a new provision that clarifies when subsection (5) may be used. Subsection (5) applies when the applicant seeks to include in an integrated authority, at least one existing environmental authority, or an environmental authority for which the applicant has made an application that the administering authority has decided to grant, but has not yet issued.

Subsection (5) replaces section 311(4) with some changes. The subsection allows the administering authority to exercise a variety of options, depending on the decision and circumstances for the application. The administering authority may decide to continue existing environmental authorities in separate documents or issue one document for many environmental authorities, or a combination of both.

Subsection (6) replaces section 311(4) that states that a single document containing many environmental authorities is called an “integrated authority”.

Subsection (7) is a new provision that clarifies that an environmental authority forming part of the single document, is called a “constituent part” of the integrated authority.

### **Requirements for integrated authority application**

Section 312 replaces current section 312, with changes. Subsection (1)(a) is a new provision that states an application for an integrated authority must be approved by the chief executive. Subsection (1)(b) replaces section 312(2)(a) without change.

Subsection (2) is a new provision that clarifies that an integrated environmental management system submission must comply with the requirements under the section 313.

Subsection (3) replaces section 312(2)(b) and also clarifies that constituent parts of the integrated authority must comply with the relevant requirements for applications and all dealings with that type of environmental authority.

### **IEMS submission—content requirements**

Section 313 replaces current section 313, without change.

### **Requirements for issuing integrated authority**

Section 314(1) is a new provision. It states that if the administering authority decides to issue an integrated authority and the applicant already holds an existing environmental authority for an environmentally relevant activity, then subsection (2) applies.

Subsection (2) states that the administering authority must, before issuing the integrated authority (as qualified by subsection (1)), cancel the existing environmental authority to which the activity relates or amend the existing environmental authority so that it does not apply to the activity that is a constituent part of the integrated authority. The provision ensures that there are no outstanding environmental

authorities that apply to environmentally relevant activities that are transferred to an integrated authority.

Subsection (3) is a new provision. It clarifies that subsection (2) does apply to the forgoing circumstances despite any other provisions that may exist about cancelling or amending an existing environmental authority.

Subsection (4)(a) is a new provision, to the extent that it refers to “constituent parts” on an integrated authority. Subparagraphs (i) to (iii) replace section 314, without change. Paragraph (b) is a new provision that provides the administering authority with the ability to fix one anniversary day for the whole integrated authority.

Subsection (5) is a new provision that requires the anniversary day fixed by the administering authority, to be the same for all the constituent parts.

### **Information notice about decision on integrated authority application**

Section 315 is a new provision. It states the administering authority must provide an applicant, whose application has been refused or approved in a form other than was applied for, a notice stating the decision, the reasons for that decision and information about how to review or appeal that decision.

## ***Division 2—Constituent parts***

### **Constituent parts continue to be environmental authorities**

Section 315A replaces current section 315. The only change is a reference to “constituent parts” which continues to be a type of environmental authority even though the environmental authority is on the integrated authority.

### **Additional requirement for amending or transferring constituent part**

Section 315B is a new provision which states that any application to amend or transfer a constituent part of an integrated authority must be

accompanied by an amended integrated environmental management system submission to assist the administering authority in deciding the application in the context of the environmental authority as part of an integrated authority.

### ***Division 3—Changing integrated authority***

#### **Amendment or cancellation to reflect change to constituent part**

Section 315C is a new provision that allows the holder of an integrated authority the flexibility to apply to add new constituent parts (being new environmentally relevant activities) to their existing integrated authority. The application must be in the approved form and accompanied by the fee prescribed in the regulation. The section provides the process, which the administering authority must follow when deciding the amendment application. Subsection (5) clarifies that the section affects no other provision in chapters 4 or 5.

#### **Adding new constituent part**

*Section 315D* allows the holder of an integrated authority to make an application to include a new environmental authority as a constituent part of the integrated authority. The amendment application must be in the approved form and accompanied by the fee prescribed under a regulation.

### **Clause 13 Insertion of new s 318A and 318B**

*Clause 13* inserts a new section 318A and 318B in chapter 6, as follows:

#### **Changing anniversary day**

Section 318A allows the holder of an environmental authority to make an application to change the anniversary day for an environmental authority. Under the current definition of “anniversary day” in schedule 3, the anniversary day for an environmental authority cannot be changed, even after it has been amended or transferred. The administering authority or an environmental authority holder may

need to change the anniversary day to achieve administrative efficiencies for financial procedures and budgeting.

Section 318A allows an environmental authority holder to make a written application to the administering authority to change the existing anniversary day to another day of each year (“the new day”).

The administering authority is required to decide an application within 20 business days after it is made.

The administering authority must, within 8 business days, give the holder a written notice of a decision to change the anniversary day. If the decision is not to change the anniversary day, an information notice must be provided to the holder within the same period. A decision to change the anniversary day takes effect on the later of the following days:

- The day the holder is given notice of the decision;
- A later day stated in the notice.

If the holder of an environmental authority agrees in writing, the administering authority may change the anniversary day to another day. However, if the environmental authority is a constituent part of an integrated authority, the anniversary day can only be changed if the anniversary day for all constituent parts of the integrated authority is changed to the new day.

### **Special provision for changeover in anniversary day**

*Section 318B* provides that if the anniversary day for an environmental authority is changed under section 318A, the period between the former anniversary day and the first anniversary under the new day, is deemed to be a year for the environmental authority. The administering authority’s obligation under section 316(2) to give an annual notice will not apply for the first anniversary day after the change.

A different form may be approved under section 316(2)(a) for an annual return for an interim year than for other years.



**Clause 14 Amendment of s 322 (When environmental audit required)**

*Clause 14* amends section 322 to enable the administering authority to require the holder of a level 1 or 2 approval, who it believes is contravening a condition of the environmental authority, to conduct and submit an environmental audit on the matter. The policy intent of the Bill is to apply consistent processes to all types of environmental authorities.

**Clause 15 Amendment of s 323 (When environmental investigation required)**

*Clause 15* amends section 323 by enabling the administering authority to commission an environmental investigation from a person who causes, or is likely to cause harm while carrying out an activity. To strengthen this provision to better achieve the object of the Act, the harm caused no longer needs to be serious or material in nature as is currently required.

**Clause 16 Amendment of s 332 (Administering authority may require draft program)**

*Clause 16* amends section 332 to enable the administering authority to require a person or public authority to prepare and submit for approval, a draft environmental management program (EMP), as a condition of an environmental authority. Under the current provision, the administering authority cannot require a draft EMP for a level 2 approval even when the condition of a development approval is contravened. The amendment strengthens this provision to better achieve the object of the Act.

Level 1 approvals are excluded because a person who holds an environmental management program cannot apply for a level 1 approval under section 108(c), and the level 1 approval may be cancelled if the administering authority considers the risk of environmental harm is no longer insignificant (sections 130(2)(g) and 135(1)).

**Clause 17 Omission of s 341 (Extensions of time for decisions on submission of draft programs)**

*Clause 17* omits section 341 because it is a duplication of section 555 (Extension of decision period), which will be retained.

**Clause 18 Amendment of s 346 (Effect of compliance with program)**

*Clause 18* amends section 346 to state that a level 2 approval holder must comply with an environmental management program despite anything stated in the level 2 approval.

**Clause 19 Amendment of s 500 (Fines payable to local government)**

*Clause 19* amends section 500(1)(a). The Environmental Protection Agency has delegated to local government, the power to enforce sections 31 and 32 of the *Environmental Protection (Water) Policy 1997* and sections 8, 9 and 68 of the *Environmental Protection (Waste Management) Regulation 2000* and may provide further delegations to local government.

Section 500 enables local government to retain fines from a court proceeding for devolved matters. If an alleged offender chooses to defend an action concerning a delegated matter in Court, the *Penalties and Sentences Act 1992* requires the payment of court imposed fines and costs to be paid to the consolidated revenue fund of the State rather than a local government.

To resolve any uncertainty, the amendment to section 500(1)(a) ensures that a fine imposed for an offence involving a delegated matter, must also be paid to the local government.

If a power is delegated to a local government under section 500 then a local government as a delegate may exercise the powers of the administering authority under sections 501 and 503.

The *Acts Interpretation Act 1954*, section 27A(3C) applies so that a delegate may exercise a delegated power as if the delegate were the delegator. The effect of amending section 500 is that a reference to an administering authority in sections 501 and 503 should be read as a reference to a local government if the local government is acting under a delegation from the administering authority.

**Clause 20 Amendment of s 503 (Recovery of costs of investigation)**

*Clause 20* amends section 503 to clarify that a Court can order a person to pay the administering authority's costs and expenses for investigating an offence against the Act, such as travel and storage of evidence costs, not just the sampling costs.

## **Clause 21 Replacement of ss 516–518**

*Clause 21* replaces sections 516 to 518 in order to resolve uncertainty about the delegation powers of the chief executive.

### **Delegation by chief executive**

*Section 516* allows the powers of the chief executive of the Environmental Protection Agency to be delegated to an authorised person, public service officer, or a local government. The provision also allows a delegation of a chief executive’s powers under subsection (1) to permit the sub-delegation of the power to an appropriately qualified entity.

An “entity” is defined in the *Acts Interpretation Act 1954*, section 36 as including “a person and an unincorporated body”.

Delegation by administrative executive or local government chief executive officer

*Section 517* allows the chief executive’s powers as the administering executive, to be delegated or sub-delegated in the same way as the chief executive’s powers under section 516.

A local government chief executive officer’s powers as the administering executive may also be delegated to an appropriately qualified employee of the local government.

A delegation of a power of a local government’s chief executive officer to an employee of the local government may permit the sub-delegation of the power to another local government employee.

### **Delegation by administering authority**

*Section 518* provides that an administering authority that is the chief executive, may delegate his or her powers to an authorised person, public service officer, or a local government.

If the administrative authority is a local government, it may by resolution, delegate the authority’s powers to an appropriately qualified entity. The delegation of a power of a local government as the administering authority to permit the sub-delegation of the power to another appropriately qualified entity is also allowed.

**Clause 22 Amendment of s 520 (Dissatisfied person)**

*Clause 22* amends section 520 to provide that the applicant for an integrated authority is the dissatisfied person for a decision made under chapter 4 or 5. A dissatisfied person may apply for a review of an original decision under section 521. A person dissatisfied with a review may appeal to the Planning and Environment Court under section 531.

**Clause 23 Amendment of s 540 (Required registers)**

*Clause 23* amends section 540 by requiring the administering authority to keep a register of the following in relation to chapter 4:

- Transfers of environmental authorities;
- Surrenders of environmental authorities;
- Reports accepted by the chief executive under section 130(g)(ii).

Section 540 will also be renumbered to accommodate the foregoing amendments.

**Clause 24 Amendment of s 546 (Annual reports)**

*Clause 24* amends section 546(4) to enable the chief executive to align annual reporting for the Act with the annual report required under the *Financial Administration and Audit Act 1977*.

**Clause 25 Amendment of s 552 (What is the “application date” for application or EMP submission)**

*Clause 25* amends section 552(1)(a) to clarify that the application date applies to applications for environmental authorities, as well as applications to amend or transfer an environmental authority.

**Clause 26 Insertion of new ch 13, pt 4**

*Clause 26* inserts a new heading in chapter 13 and a new section 618 as follows:

**“PART 4—TRANSITIONAL PROVISIONS FOR  
ENVIRONMENTAL PROTECTION AND OTHER  
LEGISLATION AMENDMENT ACT 2002”.**

**618 Section 318A does not apply for transitional authority**

*Section 618* provides that the anniversary day for a transitional environmental authority (mining activities) under section 592 of the Act cannot be changed. However, if the authority ceases to be a transitional authority the anniversary day may be changed. Section 618 also prevents the finite period of a transitional authority from being extended indirectly by changing the anniversary day.

**Clause 27 Amendment of sch 1 (Original decisions)**

*Clause 27* amends schedule 1 (Original decisions) to include new decisions created by the Bill.

**Clause 28 Amendment of sch 3 (Dictionary)**

*Clause 28* amends the following definitions in schedule 3 of the Act by omitting the definitions of “amendment application”, “anniversary day”, “appropriately qualified”, “schedule 8 development”, “surrender application” and “surrender notice”.

The following new definitions will be inserted in schedule 3:

“amendment application” “anniversary day”, “appropriately qualified”, “constituent part”, “integrated authority application”, “schedule 8 development”, “surrender application”, and “surrender notice”.

The definition of “hazardous contaminant” is amended to include unexploded ordnance.

**Clause 29 Amendment to omit headings following cross references**

*Clause 29* amends the EP Act by providing for the removal of the reference to a heading in words where this follows a cross reference to a particular provision of the EP Act. The clause has no policy implications. The bracketed provisions will be footnoted in the next reprint of the EP Act.

## **PART 3—AMENDMENT OF WATER ACT 2000**

### **Clause 30 Act amended in pt 3**

*Clause 30* provides that part 3 of the Bill amends the *Water Act 2000*.

The *Water Resources Act 1989*, section 43 required referable dams containing hazardous waste to be licensed. The *Water Act 2000*, section 1065(c) provides that safety conditions for referable dams that contain hazardous wastes are taken to be conditions of an environmental authority issued under the *Environmental Protection Act 1994* or a development approval if there is any such authority or approval.

To facilitate the transfer of safety conditions the following amendments will commence on or after the commencement of section 1065(c).

### **Clause 31 Amendment of s 1065 (Application of div 2)**

*Clause 31* changes the heading of section 1065 to refer to subdivision 1 rather than division 2. The amendment to 1065(1) clarifies that subdivision 1 applies to hazardous dams and subdivision 2 applies to other dams. A minor change to fix the positioning of a comma is made to section 1065(2).

### **Clause 32 Insertion of new s 1065AA**

*Clause 32* inserts new section 1065AA (Additional ground for amending safety condition of environmental authority). The new section provides that the safety conditions transferred to an environmental authority can be amended by the administering authority using the powers contained in section 130 of the EP Act for non mining authorities and sections 291, 292 and 605 for mining authorities.

### **Clause 33 Amendment of s 1065A (Transitional provision for dams containing hazardous waste)**

*Clause 33* provides that the transitional provisions in section 1048(2) apply to dams or applications for proposed dams. If an application for a proposed dam is not finalised at the time of commencement of section 1065 then that part of the application that deals with hazardous dams is taken to be an application for an environmental authority. The application date for

the environmental authority is taken to be the commencement date of section 1065.

**Clause 34 Insertion of new s 1065AB**

*Clause 34* inserts new section 1065AB (Application of sdiv 2) to clarify that subdivision 2 applies to dams other than hazardous dams.

## **SCHEDULE**

### **MINOR AMENDMENTS TO ENVIRONMENTAL PROTECTION ACT 1994**

The schedule to the Bill makes minor amendments to the EP Act.