Environmental Protection and Other Legislation Amendment Bill 2005

Explanatory Notes

General Outline

Short Title

The short title of the Bill is the *Environmental Protection and Other Legislation Amendment Bill 2005*.

Policy Objectives of the Legislation

The principal objectives of the Bill are to amend:

- the *Integrated Planning Act 1997* to provide for improved safety requirements for emergency coastal works (tidal works)
- the *Coastal Protection and Management Act 1995* to provide for improved safety obligations for all structures which would require a development permit (tidal works)
- the *Environmental Protection Act 1994* to provide a certification process for progressive rehabilitation that has been completed for parts of a mining project
- the *Nature Conservation Act 1992* and the *Forestry Act 1959* to provide for transitional arrangements for horse riding and stock grazing as part of the tenure transfer process under the South East Queensland Forests Agreement; and for transitional arrangements extending the use of forest reserve tenure as part of the State-wide Forest Process resolving native forest logging on land outside South-East Queensland, and progressively transferring these lands to protected area estate as logging is completed.

Reasons for the Bill

There is a need for a portfolio Bill to enable a number of miscellaneous amendments to be made to the following Acts:

- *Brisbane Forest Park Act 1977*
- *Coastal Protection and Management Act 1995*
- *Environmental Protection Act 1994*
- *Forestry Act 1959*
- *Integrated Planning Act 1997*
- *Marine Parks Act 2004*
- *Mineral Resources Act 1989*
- *Nature Conservation Act 1992*
- *Petroleum Act 1923*
- *Petroleum and Gas (Production and Safety) Act 2004*
- *Queensland Heritage Act 1992*
- *Statutory Instruments Act 1992; and*
- *Wet Tropics World Heritage Protection and Management Act 1993.*

These amendments will provide for:

- certification of progressive rehabilitation that has been completed for parts of a mining project;
- transitional tenure arrangements allowing horse riding in national parks (recovery) for up to nine years but no later than 24 November 2013; extending forest reserve tenure from October 2006 to 31 December 2025; and allowing stock grazing permits to be granted up to 31 December 2024;
- access to State forests for horses and vehicles to be regulated by using signage as an alternative to issuing permits;
- requirements under the *Coastal Protection and Management Act 1995* that all tidal works structures, which would require a development permit, be kept in a safe condition; and provides for emergency coastal works (tidal works) under the *Integrated Planning Act 1997*;

- require a ten year review of the Wet Tropics Management Plan in place of the ten year automatic expiry under the *Statutory Instruments Act 1992*;
- removal of the Environmental Protection Policies' amendment and review requirements in the *Environmental Protection Act 1994* to avoid duplication with *Statutory Instruments Act 1992* requirements; and
- minor technical, administrative and consequential corrections.

Estimated Cost for Implementation

The amendments are to be implemented within current budget allocations.

Consistency with Fundamental Legislative Principles

Section 4 of the *Legislative Standards Act 1992* requires that legislation have sufficient regard to the rights and liberties of individuals. Whether legislation has sufficient regard to the rights and liberties of individuals depends on whether, for example:

- the legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review;
- the legislation does not reverse the onus of proof in criminal proceedings without adequate justification; or
- the legislation adversely affects rights and liberties, or imposes obligations, retrospectively.

Potential breaches of fundamental legislative principles for particular amendments are noted below.

Administrative amendments to the *Environmental Protection Act 1994*

Whether legislation has sufficient regard to rights and liberties of individuals also depends on whether, for example, the legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review (s.4(3)(a) of the *Legislative Standards Act 1992*).

The Bill will update and increase the maximum penalty for providing false or misleading information or documents to 1,665 penalty units ($124,875) or 2 years imprisonment. This amendment will make the penalty comparable to those applicable for other offences in the *Environmental Protection Act 1994* and to similar provisions in other environmental legislation. The maximum penalties are justified because of the serious consequences of providing false and misleading information for public and environmental health and increased State financial liability.

The *Environmental Protection Act 1994* has imposed a maximum penalty of 165 penalty units for providing false or misleading information or documents since its commencement. Since this time, both the *Contaminated Land Act 1991* and the environmental regulation of mining components of the *Mineral Resources Act 1989* have been incorporated into the *Environmental Protection Act 1994*.

The current offences in the *Environmental Protection Act* for providing false or misleading information or documents are low in comparison to those in comparable provisions in other Queensland legislation. In the *Water Act 2000*, an offence for certifying a failure impact assessment for a dam, containing false or misleading information, has a maximum penalty of 1,665 penalty units. In the *Integrated Planning Act,* the maximum penalty for giving a false or misleading notice is 1,665 penalty units. In the *Property Agents and Motor Dealers Act 2000,* the maximum penalty for providing false or misleading statements or documents is 200 penalty units or 2 years imprisonment.

The current offences for providing false or misleading information or documents are also low in comparison to those applicable for comparable provisions in other jurisdictions. In the *Environment Protection Act 1970* (Victoria), the maximum penalty for providing false or misleading information ranges up to 2,400 penalty units (approximately $240,000) or imprisonment for 2 years or both. In the *Environment Protection and Biodiversity Conservation Act 1999* (Commonwealth), the penalties for providing false or misleading information include: imprisonment for 2 years or 120 penalty units or both if the person knew the information was false or misleading; and imprisonment for 1 year or 60 penalty units or both if the person was reckless as to whether the information was false or misleading. Proposed amendments to the *Protection of the Environment Operations Act 1997* (NSW) include an increase in the penalties for false or misleading statements in reports, in the case of a corporation to $1,000,000, or in the case of an individual to $250,000 (from $250,000 and $120,000 respectively).

The EPA makes decisions based upon information and advice, in many cases provided by members of professional organisations with suitable qualifications and expertise. The EPA needs to be confident of the veracity of such information to make regulatory decisions. If false or misleading information is provided there may be significant human health and safety impacts, environmental impacts, and financial security issues for the State.

Inappropriate urban development of a former mine site at Kingston, on the basis of professional advice, cost the government more than $7 million as 43 houses had to be purchased and extensive rehabilitation was required. This incident resulted in the *Contaminated Land Act 1991*. The contaminated land provisions of this Act, now in the *Environmental Protection Act* 1994, depend on the quality of site investigation reports provided by consultants.

More recently, the EPA has prosecuted an environmental consultant for a breach of section 480 of the *Environmental Protection Act 1994* in respect of the provision of a site validation report, which indicated that the site was clean. The site was to be used for residential subdivision. It became apparent that the person had not visited or assessed the site and that the site was highly contaminated. The Court imposed a fine of $10,000. In comparison to other penalties imposed under the *Environmental Protection Act 1994*, the fine was low.

The current penalty is also inappropriate for decisions involving mine rehabilitation. The State of Queensland has paid more than $30 million in the last 20 years for the rehabilitation of mine sites, including $7 million last financial year on one mine site and up to $2 million on several other former mining sites. The mining companies responsible had either ceased to exist or had insufficient funds to pay for rehabilitation. The State currently holds more than $800 million in financial assurance to cover such cases. However a recent audit has shown that a proportion of the mines have contributed less than they should have, in part, due to misleading representations relied upon in calculating the financial assurance.

Two cases where the deficit appears to be more than $5 million are being investigated. The total deficit could be more than $100 million.

In order to encourage mining companies to make accurate representations and to fully disclose matters that are contrary to their financial interests, it is vital that there is a strong deterrent against misleading representations.

The increased monetary penalty of 1,665 penalty units would not, in itself, provide a sufficient deterrent to collusion in providing false or misleading

information, as the potential gains are much greater than the monetary penalty. It is appropriate for the offence of providing false or misleading information to be an indictable offence with a maximum penalty that includes a term of imprisonment for 2 years.

Commencement of certain amendments to the Integrated Planning Act 1997

The amendment of the *Integrated Planning Act 1997* section 1.4.1 may be a possible breach of section 4(3)(g) of the *Legislative Standards Act 1992* in regards to retrospective application of a provision. The explanatory notes for the original section 1.4.1 say that this section provides for the continuing lawfulness under the *Integrated Planning Act* of existing uses that were lawful under the repealed *Local Government (Planning and Environment) Act 1990*. Subsequent legal advice has indicated that the section may also operate in conjunction with aspects of the roll-in of environmentally relevant activities that were unlawful under the *Environmental Protection Act 1994*, to make these activities lawful under the *Integrated Planning Act 1997*. This is an obvious cause for concern because environmentally relevant activities (identified because of their potential to cause environment harm) may go unregulated under the *Integrated Planning Act 1997* and cause significant harm to the environment. The explanatory notes for the original section clearly show an intention to only make lawful those 'planning rights' that were lawful under the repealed Act.

To this end, the proposed amendment adds subsections (2) and (3) to clarify the application of section 1.4.1. It clarifies that this section was never intended to operate to make something a lawful use in respect of an activity that did not have a necessary approval under another Act, such as environmental authority before the roll-in of environmentally relevant activities into the Integrated Development Assessment System under the *Integrated Planning Act 1997*. For example, a site may have an existing lawful use of extraction under the repealed Act. Section 1.4.1 protects the existence of this 'planning' right. However, if this extraction activity is also an environmentally relevant activity, an approval would have been needed under the *Environmental Protection Act 1994*. Section 1.4.1 does not operate to protect or create this right. These approvals were transitioned accordingly into the Integrated Development Assessment System and have no need of such protection. Those activities that were not operated lawfully previously under the *Environmental Protection Act 1994*, are not afforded the protection of this section in terms of any requirement

to obtain a development approval in relation to an environmentally relevant activity. The section only operates in relation to any requirement to obtain a development approval for the 'planning right'.

Offence provision amendments to the Marine Parks Act 2004

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation allows the delegation of administrative power only in appropriate cases and to appropriate persons (s 4(3)(c) of the *Legislative Standards Act 1992*).

The *Marine Parks Act 2004* amendment removes an offence (with a penalty of 90 penalty units) from the Act to provide for a scale of minor offences in the Regulation for which infringement notice offences can be established. These offences need to be in the Regulation to allow for their refinement as State and Commonwealth marine park regulations and zoning plans are progressively standardised. The Scrutiny of Legislation Committee's policy on delegation of legislative power to create penalties and offences suggests maximum penalties should be limited to 20 penalty units.

However, in 2004 Parliament approved the regulation making power in the current *Marine Parks Act 2004*, which provides that offences in the regulation may have a maximum penalty of 165 penalty units. It is necessary to allow up to 165 penalty units because:

- it is necessary to provide complementary offences on national park islands and adjoining marine park beaches, and for protection of wildlife such as seabirds and turtles on islands and adjacent beaches and waters. The proposed penalty units will provide consistency with similar penalties in subordinate legislation under the *Nature Conservation Act 1992* which allows for 165 penalty units;

- it is necessary for the Bill to be able to provide consistent State and Commonwealth penalty levels for regulations and zoning plans. The current penalties for offences in regulations and zoning plans under the *Great Barrier Reef Marine Park Act 1975* can apply a maximum of approximately 75 penalty units, which also makes it necessary to exceed the 20 penalty unit recommended by the Scrutiny of Legislation Committee;

- the proposed penalty provisions in the regulation will not constrain the court's discretion to impose lesser penalties based on the nature and seriousness of each case.

Wet Tropics Management Plan amendments to the Wet Tropics World Heritage Protection and Management Act 1993

Whether legislation has sufficient regard to the rights and liberties of individuals depends on whether, for example, the legislation allows the delegation of administrative power only in appropriate cases and to appropriate persons (s 4(3)(c) of the *Legislative Standards Act 1992*).

The Wet Tropics Management Plan will be removed from the automatic expiry provisions of the *Statutory Instruments Act 1992*. An equivalent review process for the Plan will be introduced to provide that the Plans are reviewed every ten years under the *Wet Tropics World Heritage Protection and Management Act 1993*. Under this Act, the Wet Tropics Management Authority (WTMA) is required to prepare a WTM Plan for the Wet Tropics World Heritage Area.

WTMA functions under the Wet Tropics Ministerial Council (WTMC), comprising two Ministers from each of the Australian and Queensland Governments. The WTMC is involved in the development, review and approval recommendation process for the WTM Plan. This provides a high level of inter-governmental scrutiny and commitment designed to ensure Australia's international obligations under the World Heritage Convention are met. Expiry of the WTM Plan would be contrary to meeting such international obligations of the Australian and Queensland Governments.

The Regulatory Impact Statement (RIS) requirements under the *Statutory Instruments Act 1992* for review or amendment to the WTM Plan will continue to apply in addition to the extensive consultation process for review and amendment of the WTM Plan under the *Wet Tropics World Heritage Protection and Management Act 1993*. Two rounds of consultation, each over a period of 40 days, are required to be undertaken for the WTM Plan.

Consultation

A wide range of public and private sector stakeholders were consulted on the particular amendments relevant to their interests. All government departments were consulted as part of the Cabinet process in developing the Bill.

Key stakeholder groups including the Queensland Resources Council, the Queensland Conservation Council, the Queensland Environmental Law Association, the Queensland Law Society, AgForce, the Environment Institute of Australia and New Zealand and other industry stakeholders

have been consulted on proposed amendments contained in the Bill. Feedback was considered and the Bill amended as a result of this process.

Notes on Provisions

Part 1 Preliminary

Short title

Clause 1 states that the Act should be cited as the *Environmental Protection and Other Legislation Amendment Act 2005*.

Commencement

Clause 2 provides for certain provisions to commence on a day to be fixed by proclamation.

Part 2 Amendment of Brisbane Forest Park Act 1977

Act amended in pt 2

Clause 3 states that this part amends the *Brisbane Forest Park Act 1977*.

Insertion of new s 36A

Clause 4 inserts a new section 36A to provide that the administering authority may delegate its powers, other than for sections 30 and 35, to an appropriately qualified authorised officer or public service officer. The *Brisbane Forest Park Act 1977* provides that the Minister (being the Administration Authority) may make by-laws regulating entry, camping, parking and other activities in the Brisbane Forest Park. The by-law

provides for the Administration Authority to issue permits to undertake these activities. The amendments clarify the Administration Authority's ability to delegate the power under the *Brisbane Forest Park Act 1977* to issue permits under the by-law, to an officer of the public service or an authorised officer.

Part 3 Amendment of Coastal Protection and Management Act 1995

Act amended in pt 3

Clause 5 states this part amends the *Coastal Protection and Management Act 1995*.

Insertion of new s 18A

Clause 6 inserts a new s 18A to clarify that a note in the text of the *Coastal Protection and Management Act 1995* is part of that Act.

Amendment of s 60 (Tidal works notices)

Clause 7 updates s 60 to reflect the amendments to s 124, namely so that a tidal works notice can be issued to a person who, under s 124, must ensure the structure (tidal works) is maintained in a safe condition.

The new section 60(1)(b), in conjunction with the replacement section 124, in addition covers the existing section 60(1)(b) and (c). Section 60 currently provides the ability for the Chief Executive to issue notices for tidal works to one or more of the following: the person responsible for the tidal works; the person responsible for the maintenance of the tidal works; or the owner of freehold land or the lessee of land leased from the State, if the land is connected to, or receives the benefit of the tidal works. The amendment provides that a tidal works notice may be served on another person who, under section 124, must ensure a structure that forms all or part of the tidal works is maintained in a safe condition. Clause 9 details changes to section 124.

Amendment of s 103 (Application of pt 6)

Clause 8 inserts a note clarifying that under the new section 4.3.6A of the *Integrated Planning Act 1997*, the development offences under sections 4.3.1, 4.3.3, 4.3.4 and 4.3.5 of that Act do not apply for the carrying out of particular operational works that is tidal work. This alerts readers of the *Coastal Protection and Management Act 1995* to the insertion of a new section 4.3.6A (Coastal emergency exemption for operational work that is tidal works).

Replacement of section 124 (Obligation to keep certain tidal works in safe condition)

Clause 9 replaces the existing section 124. Section 124 currently requires an owner of freehold land and a lessee of land leased from the State, if the land is above high water and connected to, or receives the benefit of, a structure (tidal works) for which there is a development permit, to ensure the structure (tidal works), is maintained in a safe condition. The amendment provides that this obligation applies to certain person responsible for a structure (tidal works), which would require a development permit (tidal works) under the *Integrated Planning Act 1997.* The amendments make it clear that a person who is responsible under any law or contract or other agreement to ensure that structures that are tidal works are in a safe condition, or responsible for any wrong arising out of a failure to ensure the tidal works are in a safe condition, has a statutory obligation to ensure that maintenance is carried out.

This obligation continues to apply to persons responsible prior to the commencement of the *Environmental Protection and Other Legislation Amendment Act 2005*, including those persons responsible for tidal works that were transitioned from the Harbours Act[1] under section 171 of the *Coastal Protection and Management Act 1995.*

There are also three subsections necessary to clarify the effect of the obligation, in respect of civil liability.

Amendment of s 145 (Proceedings for indictable offences)

Clause 10 amends section 145(4) to raise the penalty cap for indictable offences, when dealt with summarily, to 1665 penalty units.

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1 See dictionary definition of Harbours Act in the schedule of the *Coastal Protection and Management Act 1995*

Amendment of schedule (Dictionary)

Clause 11 expands the definition of tidal works to include works within the boundaries of a canal, whether above or below high water mark. This extends section 123 of the *Coastal Protection and Management Act 1995* dealing with the right to use and occupy in the absence of a requirement for tenure under the *Land Act 1994,* to apply to all works within the boundaries of a canal, including works over small portions of land that are effectively unallocated State land above the high water mark but within the boundary of the canal. This may occur for tidal works in a canal that is landward of tidal water (i.e. above the high water mark), for example, in a canal with a sloping wall.

Part 4 Amendment of Environmental Protection Act 1994

Act amended in pt 4

Clause 12 states that this part amends the *Environmental Protection Act 1994* and the schedule also includes amendments of the Act.

Replacement of s 26 (Preparation of draft policies)

Clause 13 replaces the current provision for the Minister to prepare draft environmental protection policies to enhance or protect Queensland's environment with a provision that the Minister may make environmental protection policies to enhance or protect Queensland's environment. The removal of the requirement for draft policies is pursuant to amendments introduced in Clause 14.

Omission of ss 29 to 32

Clause 14 omits sections 29 to 32 dealing with the process for the Minister proposing to prepare and give notice of preparation of draft environmental protection policies.

Under the *Environmental Protection Act 1994*, Environmental Protection Policies (EPPs) may be made about the environment or anything that affects or may affect the environment. There are currently EPPs for air, water, noise and waste management. These policies are subordinate

legislation and subject to the Regulatory Impact Statement requirements under the *Statutory Instruments Act 1992*. *Environmental Protection Act 1994* consultation requirements for EPPs were developed before the Regulatory Impact Statement requirements in the *Statutory Instruments Act 1992* came into force. The *Environmental Protection Act 1994* provisions are now inconsistent with the *Statutory Instruments Act 1992* requirements.

These amendments and those made under Clause 16 simplify the Environmental Protection Policy review and consultation requirements, and rather rely on the consultation requirements under the *Statutory Instruments Act 1992* as part of the Regulatory Impact Statement process. These amendments will bring the process for amending and remaking EPPs in accord with other subordinate legislation

Amendment of s 33 (Approval of final policy)

Clause 15 makes an amendment to the heading of section 33 consequential to clause 14, and removes the necessity for the chief executive to keep the approved policy open for inspection by the public during business hours at the Agency's head office. This is appropriate because of access to reprints from Goprint and widespread access to, and use of, the available resources electronically from the Office of the Queensland Parliamentary Counsel's website.

Omission of ss 35 and 36

Clause 16 omits sections 35 and 36 and this, in conjunction with clause 14, has the effect of simplifying the Environmental Protection Policy review and consultation requirements. Future review and consultation will rely on the consultation requirements under the *Statutory Instruments Act 1992* as part of the Regulatory Impact Statement process. These amendments will bring the process for amending and remaking EPPs in accord with other subordinate legislation.

Amendment of s 49 (Decision on whether EIS may proceed)

Clause 17 reduces the effect of the decision in subsection 49(1) under which the chief executive may allow the environmental impact statement (EIS) to proceed. This decision will now apply only to processes in division 4 instead of the previous provisions that applied to processes in divisions 4 to 6 of Chapter 3, part 1.

Clause 17 amends subsection 49(4) to extend the minimum submission period from 20 to 30 business days. This removes an anomaly where there

was a longer period in which to make comments on the terms of reference under section 42 than there was to make submissions on the EIS.

Amendment of s 50 (Ministerial review of refusal to allow to proceed)

Clause 18 amends the divisions to which the decision in subsection 50(4) applies. The change is a consequence of Clause 17 that limits the chief executive's power to allow the EIS to proceed under section 49 to division 4. The Minister's decision will now apply only to processes in division 4 in contrast to the previous provisions that applied to processes in divisions 4 to 6 of Chapter 3, part 1.

Clause 18 also replaces subsections 50(5) and 50(6) with subsections 50(5) to 50(7). These provisions clarify the procedure to be adopted after the Minister has made the decision in subsection 50(4). Previously subsection 50(6) applied only if the Minister confirmed the chief executive's decision. It will now apply to all decisions by the Minister under this section.

Subsection 50(5) restates that the decision by the Minister is taken to be a decision by the chief executive (made under section 49).

Subsection 50(6) provides for the chief executive to give the proponent a written notice of the Minister's decision.

Subsection 50(7) requires the Minister's reasons for confirming the chief executive's decision to be given to the proponent in the written notice.

Amendment of s 51 (Public notification)

Clause 19 amends subsection 51(1) to reflect the changes proposed in clauses 17 and 18 to subsections 49(1) and 50(4) respectively, that would restrict the scope of the decision to proceed to division 4, rather than to divisions 4 to 6 as in the existing subsection 51(1).

Amendment of s 52 (Required content of EIS notice)

Clause 20 amends subsection 52 to extend the minimum submission period from 20 to 30 business days. This is to ensure consistency with a similar amendment to subsection 49(4) under which the chief executive may set the minimum submission period.

Amendment of s 56 (Response to submissions)

Clause 21 replaces section 56(2)(c) to provide for an EIS amendment notice to accompany any amendment to the submitted EIS that are made in response to submissions.

Insertion of new ss 56A and 56B

Clause 22 inserts sections 56A and 56B into Chapter 3, part 1, division 4, subdivision 2.

Assessment of adequacy of response to submission and submitted EIS

Section 56A provides for an assessment of the adequacy of the proponent's response to submissions.

Subsection 56A(1) indicates that this section applies only if submissions have been accepted by the chief executive.

Subsection 56A(2) requires the chief executive to consider the submitted EIS and other documents that subsection 56(2) requires the proponent to submit in relation to the submissions. The chief executive must within 20 business days after the relevant period defined in section 56, decide whether to allow the submitted EIS to proceed to divisions 5 and 6.

Subsection 56A(3) provides two criteria to be used by the chief executive when making the decision in subsection 56A(2). They are the adequacy of the proponent's response to the submissions and whether all appropriate amendments have been made to the submitted EIS.

Subsection 56A(4) provides for the chief executive to give a written notice of the decision to the proponent within 10 business of making the decision.

Subsection 56A(5) requires the chief executive to include in the notice: the reasons for the decision made in subsection 56A(2) if the decision is to refuse to allow the EIS to proceed, advice that the proponent may apply to the Minister under s56B for a review of the decision, and information on how to apply to the Minister.

Ministerial review of refusal to allow submitted EIS to proceed

Subsection 56B(1) provides for the proponent to apply to the Minister by written notice for a review of the chief executive's decision under section

56A if the decision was to refused to allow the EIS to proceed to divisions 5 and 6.

Subsection 56B(2) indicates that the Ministerial review will follow the procedure provided in section 50 with necessary changes to the sections that apply and the divisions to which the EIS may proceed.

Replacement of s 57 (EIS assessment report)

Clause 23 replaces section 57.

Subsection 57(1) states that this section applies if the EIS is allowed to proceed to divisions 5 and 6 because of a decision under s56A by the chief executive, or if there has been a review by the Minister, a decision to which section 50(5) refers.

Subsection 57(2) sets the timeframes within which the EIS assessment report must be given to the proponent. A standard period of 30 business days has been set to replace a period of 10 to 30 days in the existing section. The subsection sets the commencement of this period at:

(a) if the chief executive accepts any submission – the end of the relevant period defined in section 56;

(b) if the Minister allows an EIS to proceed under s56B – the giving of the proponent notice of the Minister's decision; and

(c) in other cases (i.e. there were no submissions) – the end of the submission period.

Amendment of s 62 (Chief executive may seek advice, comment or information)

Clause 24 inserts a new subsection 62(3) that provides for a written request and a reasonable period to be allowed for response, when a proponent is required by this section to give advice, comment or information to the chief executive.

Amendment of s 64 (Inquiry does not alter process)

Clause 25 replaces the heading to this section with the words 'Making of inquiry does not of itself alter EIS process'.

Clause 25 also inserts a new paragraph 64(2)(c) to clarify that a request for advice, comment or information under section 62 does not prevent the chief

executive and the proponent agreeing to a different period for taking a step under the EIS process if that is provided for in divisions 2 to 6.

Clause 25 adds a Note that draws attention to section 67 (Process is suspended) that allows the EIS process to be suspended if a proponent does not comply with a requirement or does not take a step to which the proponent is entitled.

Amendment of s 66 (Amending EIS)

Clause 26 deletes the previous paragraph 66(1)(a) which allowed an EIS for an environmental authority (mining activities) to be amended or replaced at any time before the chief executive gives the draft environmental authority to the applicant. That provision was inappropriate because it allowed changes to the EIS to be made after the EIS process had ended under subsection 60(1). Under the previous provisions, the application documents that were made available to the public during the objection period defined in section 212 could be inconsistent if the EIS was amended after the EIS assessment report and draft environmental authority were completed.

Amendment of s 73G (When registration certificate takes effect)

Clause 27 amends subsection 73G(1) and inserts a new subsection 73G(3). The first amendment to subsection 73G(1) is a consequence of the insertion of the new subsection 73G(3). The second amendment to subsection 73G(1) replaces paragraphs 73G(1)(a) and (b) to provide for a registration certificate to state that the happening of an event may be the trigger for the certificate to take effect. This is in addition to the previous provisions that allowed a day to be specified as the trigger.

Clause 27 inserts a new subsection 73G(3) that ensures that the registration certificate does not take effect until there is a relevant development permit for the activity.

Amendment of s 77 (What is a petroleum activity, a level 1 petroleum activity and a level 2 petroleum activity)

Clause 28 replaces the words ‘exploring for or mining minerals’ with words actually used in the *Petroleum (Submerged Lands) Act 1982,* i.e. ‘exploring for, exploiting or conveying petroleum resources’.

Amendment of s 86 (Joint application may be made)

Clause 29 amends section 86 of Chapter 4A (Environmental authorities for petroleum activities), Division 2 (General provisions for applicants). Sections 83 and 84 provide for a single application for a petroleum project and sections 85 and 86 apply where there are two or more persons (joint applicants), and provide that they may apply jointly for one or more environmental authority. Section 86(2) could be interpreted as allowing more than one joint application to be made for the same environmental authority. The amended section 86 clarifies that only one joint application should be allowed for each authority.

Amendment of s 92 (Steps after granting application and the giving of financial assurance)

Clause 30 inserts a replacement subsection 92(1), to clarify a procedural requirement in granting an application for an environmental authority for a level 2 petroleum activity by removing an inconsistency with the existing section 90(d) (Requirements for application) in respect of fee payment. Section 92 details steps the administering authority must take after granting an application. Subsection 92(1) requires that if the administering authority decides to grant the application, it must, within 8 business days after the decision is made, take the steps mentioned in subsection 92(3).

Insertion of s 95A (Conditions may be requested)

Amendments to sections 95A and 97–99 clarify requirements for applications for environmental authorities (petroleum activities) that are non-code compliant, and remove incorrect references to processes involving public submissions.

Clause 31 inserts a new section 95A clarifies the circumstances under which an applicant may ask the administering authority to impose a particular condition on the environmental authority (petroleum activities). This occurs only if the condition may be imposed under section 98, and is not inconsistent with a condition that must be imposed under section 98.

Subsection 95A(2) provides for the request to be made with the application or at a later time and be accompanied by a fee that is additional to the application fee.

Amendment of s 97 (Criteria for decision)

Clause 32 extends the section 97 decision making criteria to also be used for conditions imposed under section 98, corrects references to a submission as a criterion, and renumbers the section consequentially.

Amendment of s 98 (Conditions that may and must be imposed)

Clause 33 inserts a clarification that a condition may be imposed even if the applicant did not ask for it under section 95A.

Amendment of s 99 (Steps after granting application and the giving of financial assurance)

Clause 34 inserts a new section 99(1) providing an administering authority must, within eight business days after the decision is made, follow the process mentioned in subsection 99(3) if it decides to grant the application. This amendment is consistent with that to section 92.

Amendment of s 103 (Environmental management plan)

Clause 35 inserts two new subsections into section 103 to ensure that the application for an environmental authority for a level 1 petroleum activity proposes a rehabilitation program and an appropriate amount of financial assurance.

Subsection 103(3) provides for the environmental protection commitments in an environmental management plan for the level 1 petroleum activities to include a rehabilitation program for the land disturbed by the petroleum activities on each relevant petroleum authority.

Subsection 103(4) provides for the rehabilitation program to state a proposed amount of financial assurance for the environmental authority.

Amendment of s 115 (Steps after granting application and the giving of financial assurance).

Clause 36 amends section 115 identically to clause 24, regarding Level 1 petroleum activities. This amendment is consistent with that to section 92.

Amendment of s 122 (Public notice may be required)

Clause 37 inserts a clarification that section 122 applies for an amendment application only if it is for an environmental authority (petroleum activities) for a level 1 petroleum activity, corrects grammar and renumbers subsections consequentially.

Replacement of s 129 (Transfer only by approval)

Clause 38 replaces section 129. Section 129(1) states that this section applies to environmental authorities (petroleum activities) and applications for environmental authorities (petroleum activities).

Subsection 129(2) provides that a transfer application may be made for a transfer from joint holders under which one or more joint holders will continue to hold the authority, allowing part of the authority to be transferred to another person and the remaining parts of the authority to remain with joint holders. The transfer process does not clearly provide that a single holder of an environmental authority (which would include a number of activities) can transfer part of that single person's interests to another person and still retain parts of the authority themselves.

Clause 38 inserts a new section 129(4) providing that a single holder may transfer part of their interests and retain the remaining interest. This ensures that the transfer process applies to both joint holders and single holders transferring part of their interests.

Clause 38 makes further amendments to section 129 to provide for the transfer of an application for an environmental authority (petroleum activities).

Subsection 129(1) is amended to provide for the section to apply to the transfer of an application for an environmental authority (petroleum activities).

Subsection 129(5) is inserted to provide for necessary changes to the process in sections 130 to 136 will apply to transfer of applications for environmental authorities (petroleum activities) as well as transfer of granted environmental authorities (petroleum activities).

Subsection 129(6) is inserted to clarify that a transfer of an application for an environmental authority (petroleum activities) includes the amendment of the application so that so that someone other than the current applicants becomes an applicant.

Amendment of s 133 (Audit statement may be required)

Amendments to sections 122 to 136 refer to transfers of environmental authorities (petroleum activities) under Part 4 of Chapter 4A of the Act. Under section 133 the administering authority may impose as a condition of an environmental authority a requirement to give a financial assurance. Under section 366 the holder of an environmental authority may apply to have the financial assurance amended or discharged. However when an environmental authority is transferred the financial assurance is currently not recalculated to provide the new environmental authority holder with an indication of the amount of financial assurance that is required. Recalculation of the financial assurance at the time of transfer would be an important aspect for the new holder, as the site may have been rehabilitated and require less financial assurance or been further degraded and require more financial assurance. There should be an estimate of the rehabilitation liability on the ground at the time of transfer and how much additional liability will accrue by the transferee under the existing or proposed work program. This should be included as part of the audit statement submitted by the transferee.

Clause 39 amends section 133(2) so that the applicant must state whether or not the amount of financial assurance currently given, or proposed to be given for the transferred environmental authority, has been calculated in a way that is acceptable to the administering authority, that is, according to a relevant guideline, rule or policy published by the authority. A guideline provides a formula and approved method for calculating an amount that is site specific, and results in an amount that does not exceed the likely costs or expenses for the site in accordance with section 364(6) of the Act.

Amendment of s 134 (Deciding application)

In considering an application for transfer of an environmental authority (petroleum), the suitability of the applicant should be a part of this decision. This is the case when the suitability of the applicant for a transfer of mining authority is considered under section 262.

Clause 40 expands the existing section 134(2) to require the administering authority to consider any suitability report obtained for the application in making the decision about a transfer.

Amendment of s 136 (Steps after making decision)

Clause 41 makes consequential amendments to administrative requirements in section 136 resulting from the insertion of section 129(3), which provides that a single holder may transfer part of their interests and retain the remaining interest.

Amendment of s 139 (When surrender application required)

Part 5 of Chapter 4A deals with surrenders of environmental authorities (petroleum activities). Section 139(1)(b) requires that within 90 days before a petroleum authority is to end, the holder must make a surrender application. Section 139(2) states that (1)(b) does not apply if, before the 90 days, the petroleum authority is renewed. The timing of 'within 90 days' and 'before 90 days' could lead to confusion.

Clause 42 clarifies that section 139(2) should apply where an action in section 139(2)(a) or (b) occurs before the 90 days ends.

Amendment of s 145F (Conditions for cancellation or suspension)

Part 6 deals with amendment, cancellation or suspension of applications. Clause 43 corrects section 145F(2)(b) about conditions for cancellation or suspension, to ensure that these conditions include if the holder has not given a financial assurance for the authority in accordance with the requirements of the Act.

Replacement of s 145P (Power to require change to financial assurance)

Section 145O (Financial assurance may be required before authority is issued or transferred) places a limit of eight business days after deciding to grant an environmental authority, for the administering authority to decide whether financial assurance is required and the form and amount of the financial assurance. This may not be possible, as the details of the work plan may not be finalised.

Clause 44 replaces the existing section 145P with a new section 145P (Power to require financial assurance if not previously required or to require a change to financial assurance), clarifying that financial assurance may be required at any time after the decision is made. This allows the administering authority to vary the amount of assurance required at any

time that new information is received regarding the nature of the development or extent of environmental impacts, subject to the administering authority being satisfied it is justified having regard to the matters mentioned in section 145O(3).

Amendment of s 148 (Types of environmental authority (mining activities))

Clause 45 replaces the definition of 'code compliant authority' for a level 2 mining project. The main effect of the change is to replace a reference to section 167 with section 168 which is required as a consequence of amendments to sections 167 and 168 proposed by clauses 34 and 35.

Amendment of s 154 (General requirements for application)

Clause 46 inserts a note that advises that because there are different assessment processes for level 1 and level 2 mining projects, there may be different approved forms for each type of application.

This clause also makes a minor correction to subsection 154(4).

Amendment of s 162 (Decision about EIS requirement)

Clause 47 inserts a new subsection 162(3) to clarify that the administering authority cannot require an EIS under this section if a relevant mining lease is included in a significant project declared under the *State Development and Public Works Organisation Act 1971*, section 29D, and renumbers subsections 162(3) and (4) consequentially.

Subsection 162(4) currently provides for the Minister to agree to a longer period for a decision regarding whether an EIS is required. This decision should rest with the administering authority rather than the Minister. Clause 47 amends the definition in subsection 162(5) of *required period* to this effect.

Amendment of s 163 (Minister's power to overturn decision about EIS requirement)

Clause 48 inserts a new subsection 163(1) to clarify that the Minister cannot require an EIS under this section if a relevant mining lease is included in a significant project declared under the *State Development and Public Works Organisation Act 1971*, section 26.

Amendment of s 167 (Modified application of pt 6, divs 6 to 8)

Clause 49 clarifies the process that is to be followed for the public notification and dealing with objection if an application for an environmental authority (mining activities) is for a code compliant level 2 mining project that includes a mining lease or a mining claim. The provisions in part 6, divisions 6 to 8 were intended for use when processing level 1 applications. Hence, when they are used to process code compliant level 2 applications, changes are necessary to cover the absence of a draft environmental authority and to refer to different sections in the Act.

Clause 49 will amend section 167 to indicate that sections 226 to 228, which deal with the granting of applications and giving copies of the environmental authority to the applicant, do not apply to level 2 applications. Clause 49 effectively replaces those sections with sections 168 to 168B. These changes are required for those applications that will result in a code compliant authority, which is taken to be issued automatically.

Replacement of s 168 (Non-code compliant application fee must be paid if decision is to grant non-code compliant authority)

Clause 50 replaces section 168 and inserts two new sections 168A and 168B to deal with the automatic issuing of the code complaint environmental authorities and conditions of code compliant environmental authorities.

Automatic issuing of code compliant authority in particular circumstances

Section 168 will now define the moment of time at which a code compliant environmental authority is taken to have been issued under three different circumstances.

Subsection 168(1) provides for an application which had objections that were ultimately decided by a Minster's decision under section 225 and that decision was to grant the application on the basis of the draft environmental authority (which for a level 2 code compliant application would be the standard environmental conditions in the relevant code of environmental compliance). The code compliant authority is taken to have been issued when the decision was made.

Subsection 168(2) provides for applications which had no objections when the objection period ended. The code compliant authority is taken to have been issued when that period ended.

Subsection 168(3) provides for applications which had objections at the end of the objection period but all the objections were either withdrawn or struck out before the Land and Resources Tribunal made the objections decision. The code compliant authority is taken to have been issued when the administering authority receives a notice from the applicant that there are no longer any current objections.

Conditions of code compliant authority

Section 168A provides for the conditions of code compliant environmental authorities mentioned in section 168 are the standard environmental conditions from the relevant code of environmental compliance and no additional conditions.

Provisions for grant of application if Minister's decision is to grant on different conditions

Section 168B provides for an application which had objections that were ultimately decided by a Minster's decision under section 225 and that decision was to grant the application on the basis of conditions that are different to the conditions of the draft environmental authority (which for a level 2 code compliant application would be the standard environmental conditions in the relevant code of environmental compliance).

Subsection 168B(1) defines when this section applies.

Subsection 168B(2) requires the administering authority to issue an environmental authority within 10 business days of the latter of either when the decision is made or when any outstanding application fee is paid.

Subsection 168B(3) requires that the conditions are stated in a way that reflects the Minister's decision.

Subsection 168(4) requires the administering authority to insert the environmental authority in the appropriate register and give the applicant a copy within 10 business days of the decision.

Subsection 168B(5) provides for the administering authority to record in the register that specific conditions of the environmental authority were specified in the Minister's decision.

Amendment of s 171C (Notice about refusal or condition decision)

Part 3 of Chapter 5 (Environmental authorities for mining activities) deals with processing of applications for level 2 mining projects. Section 171C(2) relates to a notice issued by the administering authority if a decision is made regarding the application. Section 171C(2)(b) provides that a notice about the decision does not stop the application from applying for another environmental authority for the activities the subject of the application.

Clause 51 provides that the giving of a notice regarding a decision under 171C does not stop the applicant from making another application, where the application was refused.

Amendment of s 171D (Modified application of pt 6, divs 5 to 8)

Clause 52 provides for a refusal stage in the processing of an application for a non-code compliant level 2 mining project that contains a mining lease or mining claim. This is achieved by including division 4 in the heading for section 171D and subsection 171D(2). This reinstates the process that was provided by the former section 197 prior to 1 January 2005.

Insertion of s 171DA (Inclusion of additional conditions in draft environmental authority)

Clause 53 inserts a new section 171DA that provides for the inclusion of additional conditions in a draft environmental authority for a non-code compliant level 2 mining project that contains a mining lease or mining claim.

Subsection 171DA(1) defines that the section applies to applications mentioned in section 171D.

Subsection 171DA(2) declares that an additional condition can be included even though it is not a relevant standard environmental condition.

Subsection 171DA(3) provides for the applicant to request that an additional condition be included in the draft environmental authority if the request is made within 5 business days after the administering authority receives the application.

Subsection 171DA(4) provides instructions on how the request for an additional condition should be made. The request can be made with the

application or on an approved form. The request must be supported by enough information to allow the administering authority to decide whether the additional condition should be included in the draft environmental authority and be accompanied by a fee prescribed under a regulation.

Subsection 171DA(5) states that a fee in addition to the application fee may be charged.

Subsection 171DA(6) states that an additional condition may be included by the administering authority, even if the applicant did not ask for it.

Omission of s 185 (Application of div 3)

Clause 54 omits section 185 (Application of div 3). This section is unnecessary as there is no longer a division 3 in part 5. The preceding section 178 defines the application of the whole of part 5. It is restricted to level 1 mining projects containing only exploration permits and mineral development licences.

Amendment of s 203 (Content requirements for submitted EM plan)

Clause 55 amends section 203 to strengthen the rehabilitation requirements for the submitted environmental management plan (EM Plan). This involves amending one subsection and inserting two new ones.

Subsection 203(2)(c) has a Note added to emphasise that continuous improvement in rehabilitation indicators and completion criteria is likely to occur as a result of ongoing monitoring or research, such as rehabilitation trials.

Subsection 203(3) is inserted to emphasise that the submitted EM Plan must contain specific rehabilitation objectives and relevant indicators and completion criteria so that the assessment process can be based on a realistic post-mining land use and methods of measuring the success of the rehabilitation areas.

Subsection 203(4) is inserted to clarify that the indicators (and by inference the rehabilitation objectives and completion criteria) may be different for different areas of land within the mining project. These areas are commonly called domains in rehabilitation plans.

Amendment of s 210 (Conditions that may and must be included in draft environmental authority)

Clause 56 inserts a new subsection 210(4) stating that the proposed conditions of the draft environmental authority must include conditions about rehabilitation objectives, indicators and completion criteria. These will be based on information provided by the applicant in the environmental management plan for the mining project. Although it is recognised that knowledge about how rehabilitation can be made more effective at the specific site will improve after rehabilitation processes are commenced, the draft environmental authority on display during the objection period must contain sufficient information on post-mining landforms and potential land use to allow rational consideration of the project and meaningful objections to be submitted. There are amendment procedures in the Act that allow changes to the rehabilitation objectives, indicators and completion criteria, if any changes become necessary as a result of future research.

Amendment of s 226 (Grant of application)

Clause 57 makes minor changes to the administrative procedures that apply if there is a Minister's decision after an objections decision hearing under section 220.

Subsection 226(3) is replaced to clarify the procedure by ensuring that the conditions of the issued environmental authority will reflect the Minister's decision. The conditions could be the same or different from those in the draft environmental authority. The previous requirement that the Minister's decision was also required in the environmental authority has been omitted as that could result in duplication with the actual final conditions. Identification of conditions set as a result of a Minister's decision is now provided for in subsection 226(5).

Subsection 226(5) is a new subsection that provides for the administering authority to record in the register any conditions that were set in a particular way because of the Minister's decision.

Insertion of new s 226A (Submitted EM plan may be amended if conditions of environmental authority are different to draft)

Clause 58 inserts a new section in chapter 5, part 6, division 7, subdivision 1.

Subsection 226A (1) specifies that this section applies if the conditions of an environmental authority granted under section 226 are different to the

conditions in the draft environmental authority. This situation will arise when the Minster's decision is to grant the environmental authority with conditions that are different to the conditions in the draft environmental authority.

Subsection 226A(2) provides for the environmental authority holder to submit an amended version of the submitted environmental management plan. This will ensure that there are no inconsistencies between the plan and the authority that might lead to uncertainty in regard to compliance, especially with rehabilitation requirements.

Subsection 226A(3) restricts the amendments to those that are necessary to ensure that the environmental management plan is consistent with the conditions. The amended plan must also comply with the requirements of section 203 (Content requirements of submitted EM plan).

Amendment of s 238 (Who may apply)

Clause 59 amends section 238 to clarify that the amendment process can be used to create a mining project from two or more existing mining tenements or to split an existing mining project into parts where the parts no longer comply with the requirements to be a single mining project as stated in section 149.

Subsection 238(2) provides for the holder of 2 or more environmental authorities (mining activities) to apply for the amendment of one of the existing environmental authorities to cover the mining activities authorised by all the environmental authorities that are proposed to form the new mining project. The amended environmental authority will be a project authority for the new mining project. This provision applies if there is more than one holder. If the holders of the environmental authorities are different, the amendment process can be used as long as all the holders are applicants for the project authority.

Subsection 238(3) clarifies that the project authority will include all conditions of all the existing environmental authorities that are subject to the application. However subsection 238(6) allows the applicant to seek amendments to those conditions.

Subsection 238(4) provides for the holder of an environmental authority (mining activities) for a mining project to make an amendment application to generate a new environmental authority for one or more mining tenements that are to be removed from the existing mining project.

Subsection 238(5) provides for the new environmental authority generated in subsection 238(4) to contain all the conditions that were in the original project authority. However subsection 238(6) allows the applicant to seek amendments to those conditions.

Subsection 238(6) provides for the applicants to seek amendments to the existing conditions of the environmental authorities mentioned in subsections 238(3) and (5) to remove any inconsistencies or to remove conditions that will be unnecessary because they relate to specific mining activities that will not be conducted under the new environmental authority.

Amendment of s 246 (Assessment level and EIS decisions for application)

Clause 60 makes a minor change to subsection 246(2) to ensure that the circumstances defined in the new section 247A relating to the assessment level decision are taken into account.

Amendment of s 247 (Ministerial decision about assessment level and EIS decisions)

Clause 61 makes a minor change to subsection 247(7) to insert the words 'and whether section 247A applies' after the words 'standard criteria'.

Replacement of s 247A (Criteria for making assessment level decision)

Clause 62 replaces the existing section 247A (Criteria for making assessment level decision) with a new section 247A (Significant increase must be decided in particular cases). The existing section stated that it only applied to a decision by the Minister under section 247. The original intent was for the section to apply to the decision made by either the administering authority under section 246 or the Minister under section 247. That intent is now clearly provided.

Clause 62 omits the previous paragraph 247A(b) and renumbers the previous paragraph 247A(c) as paragraph 247A(b).

Clause 62 also inserts a new paragraph 247A(c) that provides for a change to the rehabilitation objectives that is likely to result in significantly different impacts on environmental values to be considered as if it were likely to cause a significant increase in environmental harm. This is to

allow public comment on the change through a formal and transparent objection process.

Amendment of s 251 (Relevant application process applies)

Section 251(1) currently refers to part 5, division 3, subdivisions 3 and 4 of the *Environmental Protection Act 1994*. The *Environmental Protection and Other Legislation Amendment Act 2004* has omitted division 3 and subdivisions 3 and 4.

Clause 63 amends the incorrect reference.

Amendment of s 254 (Public notice of application)

Clause 64 amends section 254 to clarify that this section applies only if there is no certificate of public notice issued under the *Mineral Resources Act 1989*. These changes are necessary to ensure that two public notice processes are not initiated in cases where a certificate of public notice is issued under the *Mineral Resources Act 1989* because the application involves a new mining lease, a new mining claim or additional surface area.

Subsection 254(1) is amended to avoid the use of this section when a certificate of public notice is issued.

Subsection 254(2)(a) is replaced so that there is no reference to 'affected person' as used in Chapter 3. The people to whom the application notice is given are specified as the owners of land to which the application relates (relevant land), the holder or applicant for an exploration permit or mineral development licence over the relevant land for a mineral other than the mineral to which the application relates, and the relevant local government.

Subsection 254(4) is omitted because there is no longer a reference to 'affected person'.

Amendment of s 255 (Objection period)

Clause 65 inserts a new subsection 255(1) to clarify that this section applies only if there is no certificate of public notice issued under the *Mineral Resources Act 1989*.

Replacement of s 259 (Transfer only by approval)

Changes to sections 259, 261 and 264 refer to transfers of environmental authorities (mining activities) under Part 9 of Chapter 5 of the Act.

Amendments to sections 259 and 261 mirror those made for sections 129 and 133 under Part 4A dealing with environmental authorities (petroleum activities).

Amendment of subsection 259(1) by Clause 66 provides for the transfer of an application for an environmental authority (mining lease). This amendment ensures that there is a simple process to accommodate the assignment of an application for a mining lease or an interest in one under section 300 of the *Mineral Resources Act 1989*.

Clause 66 inserts four new subsections to clarify the transfer process for applications.

Subsection 259(3) clarifies that one or more joint holders may retain an interest in the environmental authority after the transfer is approved.

Subsection 259(6) clarifies that transfer of an application can only occur if the application is for an environmental authority (mining lease).

Subsection 259(7) provides for changes in sections 260 to 266 so that the applicant is regarded as the holder of the authority and a reference to the environmental authority is taken to be a reference to the application.

Subsection 259(8) clarifies that the transfer process can be used in cases where one or more of the original applicants remain as applicants and have in effect transferred only part of their original interest in the application to a person who was not an original applicant.

Clause 66 amends section 259(3) to ensure that the transfer process applies to both joint holders and single holders transferring part of their interests, consistent with the amendment made to s 129(3).

Amendment of s 260 (General requirements for transfer application)

Clause 67 makes a minor change by replacing the word ‘granted’ with ‘approved’.

Amendment of s 261 (Audit statement may be required)

Clause 68 amends section 261 so that the applicant must state whether or not the amount of financial assurance currently given, or proposed to be given for the transferred environmental authority, has been worked out in a way acceptable to the administering authority, that is, according to a relevant guideline, rule or policy or rule published by the authority. A

guideline provides a formula and approved method for calculating an amount that is site specific, and results in an amount that does not exceed the likely costs or expenses for the site in accordance with section 364(6) of the Act.

Amendment of s 264 (Steps after making decision)

Clause 69 amends procedural requirements of section 264 consequential to the amendment of section 259(3).

Insertion of new ch 5, pt 9A (Progressive rehabilitation)

Clause 70 inserts into Chapter 5 a new Part 9A. This part defines a process for the holder of an environmental authority to obtain a certificate that an area of rehabilitation meets the necessary requirements. The new provisions are as follows.

Part 9A Progressive rehabilitation

Division 1 Certification of progressive rehabilitation for level 1 mining projects

Subdivision 1 Progressive certification and its effects

What is progressive certification

Section 266A provides for the administering authority to certify that an area of rehabilitation within a mining tenement in a level 1 mining project has met the criteria required under the Act, the environmental authority or any guideline published by the administering authority. This is called progressive certification because it is occurring progressively during the term of the mining tenement rather than being left until the tenement is about to be surrendered. The area subject of the progressive certification is a certified rehabilitated area for the mining tenement. It is possible to have several certified rehabilitated areas for one mining tenement.

Effect of progressive certification

Section 266B declares that progressive certification of a rehabilitated area indicates that the rehabilitation requirements mentioned in section 266A are taken to have been met, despite any other provisions in the Act. Attention is drawn to the next section that imposes some obligations on the holder of the environmental authority.

Continuing responsibility of environmental authority holder relating to certified rehabilitated area

Section 266C applies if progressive certification has been given for a mining tenement.

Subsection 266C(2) imposes a condition on the relevant environmental authority for the mining tenement that contains the certified rehabilitated area requiring the holder of the environmental authority to maintain the certified rehabilitated area and to continue to comply with the relevant environmental authority. This might include monitoring and maintenance to prevent or manage any environmental harm resulting from mining activities in the area to levels stated in the environmental authority.

Subsection 266C(3) provides for the obligations to cease on the latter of the surrender of the mining tenement under the *Mineral Resources Act 1989*; the cancellation or surrender of the environmental authority; or the fulfilment of a condition of the environmental authority.

Subdivision 2 Applying for progressive certification

Who may apply for progressive certification

Section 266D provides for the holder of an environmental authority (mining activities) for a level 1 mining project to apply for progressive certification.

Requirements for application

Section 266E provides the requirements for an application for progressive certification.

Subsection 266E(1) requires the application to be in the approved form, supported by enough information to enable the administering authority to

decide the application, and be accompanied by a progressive rehabilitation report, an audit statement and the prescribed fee.

Subsection 266E(2) specifies that the progressive rehabilitation report must comply with the requirements set out in section 266G.

Subsection 266E(3) specifies that the audit statement must be made for the environmental authority holder and must contain a statement about the extent to which the mining activities have complied with the conditions of the environmental authority and the accuracy of the progressive rehabilitation report.

Amending application

Section 266F provides for the amendment of an application for progressive rehabilitation.

Subsection 266F(1) allows the applicant to amend the application at any time before the administering authority decides the application.

Subsection 266F(2) requires that the amendment is by a written notice given to the administering authority.

Subsection 266F(3) requires that the prescribed fee accompany the notice.

Subsection 266F(4) requires any necessary amendments to the progressive rehabilitation report or audit statement to accompany the notice.

Subdivision 3 Progressive rehabilitation report

Requirements for progressive rehabilitation report

Section 266G is a new section that establishes the required content of a progressive rehabilitation report.

Subsection 266G(1) refers to section 274, which provides the content required for a final rehabilitation report, and applies those requirements with necessary changes to relate the requirements to the certified rehabilitation area the subject of the application instead of the land that is the subject of a surrender application to which a final rehabilitation report applies. The subsection also requires additional information to be included in the progressive rehabilitation report. This includes a map that shows the proposed certified rehabilitated area at an appropriate scale so that it can be readily identified; supporting information on the location of the area such

as global positioning system (GPS) coordinates or survey information; and an environmental risk assessment for the area. Information about any areas that have previously received progressive certification for any mining tenement within this mining project must also be supplied.

Subsection 266G(2) requires the environmental risk assessment to comply with a methodology published by the administering authority. The assessment must identify all credible risk events related to a failure of the rehabilitation to perform as it was intended. An event is credible if there is a reasonable expectation that it is likely to occur at least once within a time span measured in hundreds or possibly thousands of years, and it would have significant cost consequences. Identification of credible risk events may involve a fault-tree analysis, an environmental liability risk assessment or similar assessment that produces a risk register for the proposed certified rehabilitated area.

The likelihood and consequences of each credible risk event must be evaluated and compared against a published threshold. This might involve calculation of the 'risk cost' or 'risk quotient', i.e. the product of the likely cost of an event multiplied by its likelihood of occurrence. The risk cost could be compared with the threshold for material environmental harm, as defined in section 16 of the Act, to determine which risk event need to be covered in a residual risk calculation.

Amending report

Section 266H provides for the amendment of a progressive rehabilitation report.

Subsection 266H(1) allows the applicant to amend the progressive rehabilitation report at any time before the administering authority decides the application.

Subsection 266H(2) requires that the amendment be made by a written notice.

Subsection 266H(3) requires that the prescribe fee accompanies the notice.

Subsection 266H(4) states that the progressive rehabilitation report for the application is the original report as amended from time to time by a notice given under this section.

Assessment report may be given

This is a new section that provides for an assessment report about the progressive rehabilitation report.

Subsection 266I(1) provides for the administering authority to give the assessment report to the applicant.

Subsection 266I(2) sets the time frame in which the administering authority can give the assessment report to the applicant as 30 business days after the application is made or after a notice of amendment is given to the administering authority.

Subdivision 4 Processing application

Deciding application

Section 266J sets the time frame in which the administering authority must decide to give the certification or refuse the application for progressive certification. The decision must be made within 40 business days after the application is made or after a notice of amendment is given to the administering authority.

Criteria for decision

Section 266Kprovides the criteria for deciding whether to give or refuse the progressive certification.

Subsection 266K(1) sets out the matters the administering authority must consider. These include any relevant Environmental Protection Policy requirement, the standard criteria, the progressive rehabilitation report, the audit statement, any relevant assessment report, and any other matter prescribed by regulation.

Subsection 266K(2) states that progressive certification cannot be given unless the administering authority is satisfied with the environmental risk assessment and that: the conditions of the environmental authority have been complied with or that the rehabilitation in the area subject of the application is satisfactory or another circumstance prescribed by regulation for this section has been satisfactorily met.

Steps after making decision

Section 266L sets out the steps the administering authority must follow after making a decision in regard to an application for progressive certification.

Subsection 266L(1) prescribes that the administering authority must within 10 business days after making the decision give the applicant either an information notice (if the application was refused) or a written notice (if the decision was to give the progressive certification) and to record the particulars of the certification in the appropriate register.

Subsection 266L(2) states that despite subsection (1), the progressive certification is not to be given until any requirement to make a residual risk payment has been made.

Division 2 Payment for residual risks of rehabilitation

Application of div 2

Section 266M states that division 2 applies if there has been an application for progressive certification.

Payment may be required for residual risks

Section 266N provides for the administering authority to require the payment of a stated amount for the residual risk of the proposed certified rehabilitated area.

Subsection 266N(1) makes the requirement subject to the criteria in section 266N and the decision on the amount and form of the payment in section 266N.

Subsection 266N(2) requires the administering authority to include the request for the payment to be made in an information notice or be accompanied by an information notice. This gives the applicant a right to a review or appeal against the decision.

Subsection 266N(3) states that the payment may be made as an addition to the amount of financial assurance for the environmental authority until the relevant mining tenement is surrendered. Alternatively, under section 266P a cash payment may be made to the administering authority while the

relevant mining tenement is current or must be made when the tenement is surrendered.

Criteria for decision to make requirement

Section 266O sets the criteria that the administering authority must have regard to when deciding whether to require a payment for residual risk.

Paragraph 266O(a) sets the degree of risk of environmental harm as a criterion. Australian/New Zealand Standard AS/NZS 4360:2004 *Risk Management* defines risk as the chance of something happening that will have an impact on objectives. It is typically calculated as a combination of likelihood of an event and the consequences of that event.

Paragraph 266O(b) describes the type of events that might require future action by the administering authority such as reinstating rehabilitation that fails to establish a safe, stable and self-sustaining ecosystem; restoring environment that has been adversely affected by effects of the mining activities despite the rehabilitation; and maintaining environmental management processes that are required to protect the environment. In order to use this criterion, the administering authority will require either qualitative or quantitative estimates of the likelihood of a relevant event occurring. Where possible qualitative estimates of the likelihood of these events will be obtained either from past experience, field trials or theoretical models. Past experience at the site is preferable provided that it covers an appropriate length of time.

Paragraph 266O(c) clarifies that when considering the consequences of the event, the administering authority is to consider the cost of likely action in comparison to the cost of best practice environmental management of similar land use where the land has not been previously mined. Costs that would normally be expected for the activity in unmined areas would not be included in the required residual risk payment.

Amount and form of payment

Section 266P provides for the administering authority to decide the amount and form of the payment for residual risks. Subsection 266P(2) states that the administering authority may calculate the amount using a procedure that has been published in a guideline or other document that is publicly available. The amount must not be greater than the total likely costs and expenses that may be incurred to rehabilitate, restore or protect the environment from the residual risks.

Amendment of s 268 (Surrender only by approval)

Clause 71 amends section 268 (Surrender only by approval) to draw attention to section 269A, which provides for a different process if there has been an application for a conditional surrender under the *Mineral Resources Act 1989*.

Replacement of s 269 (Surrender may be partial)

Clause 72 replaces the existing section 269 with a new section 269 (Partial surrenders) to provide a direct link to partial surrender applications made under the Mineral Resources Act.

Subsection 269(1) provides for an application for a partial surrender and for the administering authority to be able to approve an application to surrender part of an environmental authority.

Subsection 269(2) clarifies that this process applies to a situation where a tenement surrender application has been made under the *Mineral Resources Act 1989* for the surrender of all or part of a relevant mining tenement for an environmental authority and some relevant mining tenements or part of a relevant mining tenement remain in force.

Subsection 269(3) excludes conditional surrenders from the process defined in this section.

Subsection 269(4) provides an additional ground for refusing an application for a partial surrender. It is that the applicant has not made an amendment application for the environmental authority to take account of the activities that will continue to be undertaken on the remaining mining tenements and the administering authority considers that it is appropriate to do so.

Conditional surrender of environmental authority (mining activities)

Clause 72 also inserts a new section 269A (Conditional surrender of environmental authority (mining activities). This section provides a simple process for dealing with the environmental authority when there has been an application for the surrender of a mining tenement conditional upon the grant of a new mining tenement under the *Mineral Resources Act 1989*.

Subsection 269A(1) states that the section applies if the holder of the environmental authority (who is the holder of the relevant mining

tenements) seeks a conditional surrender of a mining tenement (a tenement surrender).

Subsection 269A(2) states that the holder may apply for approval of a surrender of that part (which may be the whole) of the existing environmental authority conditional on the issuing of a replacement authority that relates to the land subject to the tenement surrender. If any of the old environmental authority is not involved in the surrender, the holder may seek amendment of the authority to reflect any changes to the activities that will be conducted on the relevant mining tenements.

Subsection 269A(3) provides for the application to describe the mining activities that will be conducted on the land subject to the tenement surrender and for the application to propose the amount of financial assurance that is required for the new authority, any amendments to the old authority and conditions for the new authority.

Subsection 269A(4) states that the administering authority can take steps mentioned in subsection (2) without a surrender application being made. In practice a surrender application will only be required if some of the land covered by the original mining tenements is not covered by the new mining tenements or parts of the original tenements that are retained.

Subsection 269A(5) states that in determining when the new environmental authority takes effect, section 303(3)(a) is to be read as if the new tenement were the relevant mining tenement.

Amendment of s 274 (Content requirements for report)

Clause 73 amends section 274 (Content requirements for report) by inserting three new paragraphs in section 274(1)and a new subsection 274(2).

A new paragraph 274(1)(e) requires the final rehabilitation report to include details of any monitoring program required by a condition of the environmental authority in relation to rehabilitation. It also requires that the final rehabilitation report contain details of the consultation that the company has undertaken in establishing the appropriateness of the completion criteria. These two sets of information will assist the administering authority to decide the application but do not represent criteria against which the application is to be assessed, beyond what may be required in a condition of the environmental authority;

Paragraph 274(1)(f) requires an environmental risk assessment of the land.

Paragraph 274(1)(g) requires calculations of residual risks associated with the rehabilitation. Several examples are give to show the range of these risks and to emphasise that the risks are to be calculated in terms of monetary costs in present day dollar terms.

Subsection 274(2) requires the environmental risk assessment to use a methodology agreed to by the administering authority and identify parts of the land that are considered to be likely to require remedial action.

Amendment of s 278 (Criteria for decision)

Clause 74 amends section 278 to add additional criteria for deciding surrender applications.

Subparagraph 278(1)(b)(ii) requires the administering authority to consider monitoring results relating to the rehabilitated area.

Paragraph 278(1)(c) requires the administering authority to validate any progressive certification against the criteria which were used in the original assessment and recognise the certification if it still meets those requirements.

Subsection 278(3) provides for the administering authority to refuse the application if it considers that environmental authority does not include appropriate environmental objectives or indicators.

Subsection 278(4) provides for the environmental authority holder to apply to amend the authority to include appropriate environmental objectives or indicators.

Insertion of new ss 278A and 278B

Clause 75 inserts two new sections, section 278A (Directions to carry out rehabilitation if surrender refused), and section 278B (Payment may be required for residual risks of rehabilitation).

Directions to carry out rehabilitation may be given if surrender refused

Section 278A provides for the administering authority to give the applicant for a surrender a written direction to carry out further rehabilitation within a stated reasonable period, if the application is refused.

Payment may be required for residual risks of rehabilitation

Section 278B provides for the payment by the applicant for the surrender of an environmental authority to the administering authority to cover residual risks of rehabilitation failing or requiring maintenance.

Subsection 278B(1) states that this section applies only if a surrender application has been made.

Subsection 278B(2) states that this section does not apply for an application for a conditional surrender under section 269A.

Subsection 278B(3) provides for the administering authority to require a payment of residual risk.

Subsection 278B(4) describes how the amount for residual risk must take account of any previous payments for residual risk that were made when progressive certification was approved. However, before that happens, this subsection requires the administering authority to validate that the previous certification is still valid by reassessing the certified rehabilitated area against the completion criteria that were applied when the certificate was given.

Amendment of s 279 (Steps after making decision)

Clause 76 amends section 279 (Steps after making decision) to recognise that there is more than one decision and to ensure that there are review and appeal rights associated with decisions to refuse a surrender application or to give a rehabilitation direction by requiring that information notices be given to the applicant.

Paragraph 279(a)(ii) has an additional requirement for an information notice to be given if there has been a decision under section 278B requiring a payment for a residual risk.

Paragraph 279(b) is amended to provide for an information notice to be given if there has been a decision under section 278A to give directions to carry out rehabilitation.

Insertion of new s 279A

Clause 77 inserts a new section 279A (Restriction on surrender taking effect if payment required for residual risks).

Restriction on surrender taking effect if payment required for residual risks

Subsection 279A(1) states that this section applies if the applicant for surrender has been required to pay an amount for residual risks.

Subsection 279A(2) provides that until the payment has been made, the decision to approve the surrender does not take effect and the particulars of the surrender must not be entered into the register under section 279(1)(a)(i).

Amendment of s 289 (False or misleading information about environmental audits)

Clause 78 amends section 289(1) and (2) to provide for a maximum penalty of 1,665 penalty units or 2 years imprisonment for providing false or misleading information about environmental audits.

Amendment of s 298 (Notice of proposed action decision)

Clause 79 makes a minor correction to the type of environmental authority.

Amendment of s 358 (When order may be issued)

Clause 80 inserts securing compliance with a rehabilitation direction as one of the grounds for issuing an environmental protection order.

Amendment of s 364 (When financial assurance may be required)

Clause 81 adds a relevant development approval to the list of environmental instruments to which a financial assurance can be added.

Amendment of s 366 (Application for amendment or discharge of financial assurance)

Clause 82 amends section 366 by inserting two new subsections to clarify the process regarding the discharge of financial assurance when there is a transfer of the environmental authority.

Subsection 366(7) states that subsection (8) applies if the application to amend or discharge a financial assurance is made because of an application to transfer the environmental authority.

Subsection 366(8) provides for the administering authority to delay the repayment of the financial assurance to the transferrer until the transfer has been approved, any financial assurance required from the transferee has been received and the transfer has taken effect.

Amendment of s 436 (Unlawful environmental harm)

Clause 83 omits codes of environmental compliance from the evidence of complying with the duty of care in subsection 436(3) because compliance with the conditions in the codes is listed in subsection (1) as authorisation to cause environmental harm.

Amendment of s 480 (False, misleading or incomplete documents)

Clause 84 amends section 480(1) to provide for a maximum penalty of 1,665 penalty units or 2 years imprisonment for providing false, misleading or incomplete documents.

Amendment of s 481 (False or misleading information)

Clause 85 amends section 481(1) to provide for a maximum penalty of 1,665 penalty units or 2 years' imprisonment for providing false or misleading information.

Amendment of s 492 (Responsibility for acts or omissions of representatives)

Clause 86 inserts a revised definition of representative into subsection 492(4) to replace a definition that was previously in Schedule 3. The relocation is to emphasise the link between this definition and the responsibilities imposed under section 492. The changes essentially extend the definition of representative to clarify that a subsidiary or controlled corporation as defined in the *Corporations Act 2001* (Cwlth) is a representative of the parent or controlling corporation. Proceedings under the Act may be taken against the parent or controlling corporation for the actions of its subsidiary.

Amendment of s 540 (Required registers)

Clause 87 amends the requirements relating to registers that the administering authority must keep to include a register of submitted progressive rehabilitation reports.

Amendment of s 549 (Minister may approve standard environmental conditions)

Clause 88 amends subsection 549(1) to provide for the Minister to approve standard environmental conditions for part of an environmental authority to which a code of environmental compliance relates. The aspects to which the code relates would be defined in the code.

Amendment of s 549A (When standard environmental conditions must be complied with)

Clause 89 amends section 549A to include a reference to section 435B to ensure that the offence of not complying with standard environmental conditions does not apply to anyone acting under the operator's registration certificate for 12 months after the standard environmental conditions were approved.

Amendment of s 619 (Continuing effect of particular environmental authorities)

Clause 90 amends section 619 to clarify the relationship between this section and section 624 (Effect of commencement on particular approvals) and to ensure that limitations to the effect of particular environmental authorities continue unaffected when these environmental authorities are taken to be a registration certificate or development approval under this section.

Subsection 619(1) is amended to exclude any environmental authorities to which section 624(1)(b) applies. These are deemed approvals that came into existence in 1995 and 1996.

Paragraph 619(1)(e) is amended by the insertion of words that indicate that the environmental authority's effect as a registration certificate or development approval ceases when the term of the environmental authority ceases. This will apply to all provisional licences and most approvals for level 2 environmentally relevant activities for chapter 4 activities, which were granted for a limited period of time.

Subsection 619(3) is amended to exclude any environmental authorities to which section 624(1)(b) applies. These are deemed approvals that came into existence in 1995 and 1996.

Amendment of s 624 (Effect of commencement on particular approvals)

Clause 91 amends section 624 (Effect of commencement on particular approvals) to clarify the relationship between this section and section 619 (Continuing effect of particular environmental authorities). It also clarifies which approvals are covered by section 624 and when some of those cease to have effect.

Paragraph 624(1)(a) is amended to exclude any environmental authorities to which section 619(3) applies.

Paragraph 624(1)(b) is amended to clarify which environmental authorities are covered by section 624. These are the deemed approvals that came into existence in 1995 and 1996 under sections 63 or 65 of the now repealed *Environmental Protection (Interim) Regulation 1995*.

Subsection 624(1A) is inserted to exclude from section 624, any activities authorised by environmental authorities to which section 619 applies.

Paragraph 624(2)(b) is replaced to include further reasons for an approval ceasing to have effect. The existing paragraph mentions only a change in the person who is carrying out the activity. A material change of use for the activity and a development approval taking effect under the *Integrated Planning Act 1997* are additional circumstances that have been inserted. These further reasons are intended to assist with the integration of deemed approvals into the *Integrated Planning Act 1997*.

Subsection 624(5) is inserted to declare that a registration certificate given under subsection 624(4) does not affect the continuation of the development approval mentioned in paragraph 624(1)(a) and does not affect the operation of section 624(2)(b) in determining when an approval mentioned in section 624(1)(b) ceases to have effect.

Commencement in this section refers to the commencement of the *Environmental Protection Legislation Amendment Act 2003* on 4 October 2004.

Amendment of s 629 (Continuing operation of s594 (Limited application of s427 for transitional authority))

Clause 92 omits section 629. This section refers to section 594 and the application of section 427. Section 594 has been corrected, through Clause 45, to refer to section 426; therefore section 629 is no longer required.

Amendment of s 631 (Financial assurance if security for related petroleum authority is monetary)

Clause 93 makes a minor change to subsection 631(2) to clarify that the reference to 'the section' should be to 'either section mentioned in subsection 631(1)'.

Amendment of s 632 (Financial assurance if security for related petroleum authority is non-monetary)

Clause 94 makes a minor change to subsection 632(3) to clarify that the reference to 'the section' should be to 'either section mentioned in subsection 632(1)'.

Amendment of s 634 (Amendment of financial assurance condition under this part)

Clause 95 makes a minor correction. A reference to subsection 634(3) is replaced with a reference to 634(4).

Insertion of new ch 13, pt 8 (Transitional Provision for Environmental Protection and Other Legislation Amendment Act 2005)

Clause 96 inserts into chapter 13 a new part 8 that provides transitional provisions for the amendments proposed in this Bill.

Part 8 Transitional Provision for Environmental Protection and Other Legislation Amendment Act 2005

EISs currently undergoing EIS process

Clause 96 inserts a new section 642 (EISs currently undergoing EIS process) that states that sections 56A and 56B do not apply for an EIS if the draft terms of reference for the EIS were, under section 46, submitted before the commencement of sections 56A and 56B.'.

Transitional provision for amended ss 619 and 624

Clause 96 also inserts a new section 643 to provide transitional arrangements for sections 619 and 624.

Sections 619 and 624, inserted by the *Environmental Protection Legislation Amendment Act 2003,* were designed to cater for the range of approvals types existing under the *Environmental Protection Act*. Clauses 90 and 91 of this Act address a potential overlap of the operation of these provisions, in relation to those approvals identified in section 624(1)(b), that is, deemed approvals.

This potential overlap resulted in both s 619 and s 624 arguably applying to deemed approvals despite the original intent for these sections. The original intent was that section 619 was not to apply to deemed approvals. This is reinforced in the Explanatory Notes to the *Environmental Protection Legislation Amendment Act 2003,* which state that deemed approvals are not transitioned under section 619.

To clarify the original intent, the new section 643 provides that if, under any circumstance, the existing section 619 (as in force before the amendments in this Bill) applied to one of these deemed approvals covered by s624(1)(b), then section 619 no longer applies from the commencement of the new section 643.

After the commencement of this section, despite the original section 619, this provision ceases to apply to deemed approvals. This will provide for operation of sections 619 and 624 in line with the original legislative intent.

Amendment of sch 1 (Original decisions)

Clause 97 inserts additional sections in Schedule 1, part 1, division 3 that provide for original decisions in these sections. These original decisions provide review and appeal rights to the person affected by these decisions. The Land and Resources Tribunal will hear the appeals. The sections are:

266J Refusal of progressive certification
266N Requirements to make residual risk payment
278A Decision to give rehabilitation direction
278B Requirement to make residual risk payment

Amendment of sch 3 (Dictionary)

Clause 98 makes minor amendments to the Dictionary definitions of *mobile and temporary environmentally relevant activity*, *non-code compliant authority*, and *public notice requirement*.

Clause 98 makes minor amendments to the Dictionary definitions by omitting the existing definitions of:

EIS process;
Representative;
Transfer application;

and inserting new definitions of:

Certified rehabilitated area;
Conditional surrender;
EIS process;
Level 2 chapter 4 activity;
Progressive certification;
Project authority;
Rehabilitation direction;
Residual risks;
Transfer application;

and makes minor amendments to the definitions of:

Amendment application;
EIS assessment report;
Submitted EM Plan.

Part 5 Amendment of Forestry Act 1959

Act amended in pt 5

Clause 99 states this part amends the *Forestry Act 1959* and that the schedule at the rear of the Bill also includes amendments of the *Forestry Act 1959*.

Amendment of s 35 (Granting of permit for land within State forest)

Clause 100 amends section 35 to allow stock grazing permits to be granted for a period longer than 7 years up to 31 December 2024 on specific reserves within the SEQFA area. The granting of permits for the period up to 31 December 2024 is limited to areas of the SEQFA forest reserve, defined as a forest reserve under the *Nature Conservation Act 1992,* the dedication of which was in force immediately before the commencement of the *Environmental Protection and Other Legislation Amendment Act 2005*.

The South East Queensland Forests Agreement (SEQFA) area referred to is the area covered by the agreement. This agreement specifically relates to the areas that have been gazetted as forest reserve to date under the *Nature Conservation (Forest Reserves) Regulation 2000.* The amendment is needed to allow specific holders of Stock Grazing Permits on identified forest reserves (who have been offered an extension of greater than 7 years as a result of the SEQFA Grazing Program) to be granted a Stock Grazing Permit for this extended period (ending no later than 31 December 2024).

Amendment of s 73 (Unlawfully using State forests etc.)

Clause 101 amends section 73 to allow the traversing of State forests or any part of the area with vehicles, teams, horses, or other animals without the need to obtain a traverse permit, as long as the activity is carried out in accordance with a regulatory notice. A regulatory notice is a sign positioned at the entrance to a State Forest stipulating what access is permitted and the relevant conditions of such access.

Part 6 Amendment of Integrated Planning Act 1997

Act amended in pt 6

Clause 102 states this part amends the *Integrated Planning Act 1997*.

Amendment of s 1.3.5 (Definitions for terms used in development)

Clause 103 amends section 1.3.5 and the definition of material change of use, in relation to the administration of environmentally relevant activities. It adds further circumstances that will be considered a material change of use.

The continuation of an environmentally relevant activity (except for mining and petroleum activities) on the premises will be considered a material change of use in a number of circumstances. Firstly, new subsection 1.3.5(c)(i) makes provision for a transitioned approval under the *Environmental Protection Legislation Amendment Bill 2003* that ceases to have effect as a result of these transitional provisions, more specifically sections 619(2)(e) and 624(2)(b). Once the identified approval ceases to have effect, the continuation of the environmentally relevant activity on the premises is treated as a material change of use, despite the fact that the use may be continuous or that there are no other material changes in intensity or scale on the site. This is to ensure that environmentally relevant activities are regulated appropriately and improves the integration of these transitioned approvals into the IDAS framework.

Secondly, new subsection 1.3.5(c)(ii) provides for the continuation of an environmentally relevant activity on the premises to be considered a material change of use when there is no development approval for the activity and the activity was operated without the necessary environmental authority before the commencement of this section. This change assists in making the regulation of environmentally relevant activities under the current IDAS regime consistent with the former regime under the *Environmental Protection Act 1994*.

Environmentally relevant activities that should have held an environmental authority under the *Environmental Protection Act 1994* either before 4 October 2004 (for mobile and temporary or 'itinerant' ERAs) or before 30 March 1998 (for all other ERAs except mining and petroleum activities)

and operated unlawfully because of that, will still require a development approval. This is to ensure that operators who were unlawful under the *Environmental Protection Act 1994* and currently are unaffected by the appropriate transitional provisions for the transfer of environmental authorities into IDAS, will not benefit from this unlawfulness and remain without environmental regulations under the *Integrated Planning Act 1997*. This requirement is despite the fact that the use is continuing or that there has been no material change in intensity or scale on the site.

Amendment of s 1.4.1 (Lawful uses of premises on 30 March 1998)

Clause 104 inserts subsections (2) and (3) to clarify the application of section 1.4.1. This clause clarifies that this section was never intended to operate to make something a lawful use in respect of an activity that did not have a necessary approval under another Act, such as environmental authority before the roll-in of ERAs into IDAS.

This section provides for the continuing lawfulness under the *Integrated Planning Act 1997* of existing uses that were lawful under the repealed *Local Government (Planning and Environment) Act 1990*. The section does not provide for the lawfulness of an activity that required an approval under another Act and operated unlawfully for the purposes of that Act.

For example, a site may have an existing lawful use of extraction under the repealed Act. Section 1.4.1 protects the existence of this 'planning' right. However, if this extraction activity is also an ERA, an approval would have been needed under the *Environmental Protection Act 1994*. Section 1.4.1 does not operate to protect this right. These approvals were transitioned accordingly into IDAS and have no need of such protection. Those activities which were not operated lawfully previously under the *Environmental Protection Act 1994*, are not afforded the protection of this section in terms of any requirement to obtain a development approval in relation to an environmentally relevant activity. The section only operates in relation to any requirement to obtain a development approval for the 'planning right'.

Amendment of s 3.8.1 (Mobile and temporary environmentally relevant activities)

Clause 105 makes minor amendment to (1) to ensure that the terminology used in this subsection is consistent with that used elsewhere in the *Integrated Planning Act 1997* including in the relevant offence provisions.

This clause also amends (2) to include a requirement for written consent of the person who applied for the development approval for other persons who wish to carry out the activity under the approval. Applicants, their employees and agents are entitled to operate under the development approval. This amendment is to ensure that, as development approvals for mobile and temporary ERAs do not attach to the land, that unrelated persons cannot operate under a non site-based DA without first getting the consent of the person who applied for the DA in the first instance.

Amendment of s 4.3.1 (Carrying out assessable development without permit)

Clause 106 makes a minor amendment to section 4.3.1 to replace the word 'start' with 'carry out'. This makes the wording of the section consistent with the title and ensure that where the on-going use of the site is regulated, such as for environmentally relevant activities, that it is the carrying out of the activity that informs the offence. The start of the activity at some specific point in time is not really significant in terms of the on-going use.

Amendment of s 4.3.3 (Compliance with development approval)

Clause 107 amends s 4.3.3(2) so that s 4.3.3 is subject to s 4.3.6A.

Amendment of s 4.3.4 (Compliance with identified codes about use of premises)

Clause 108 amends Section 4.3.4(2) so that s 4.3.4 is subject to s 4.3.6A.

Amendment of s 4.3.5 (Offences about the use of premises)

Clause 109 amends Section 4.3.5 so that it is subject to s 4.3.6A.

Amendment of s 4.3.6 (Development or use carried out in emergency)

Clause 110 amends Section 4.3.6 to be headed 'General exemption for emergency development or use' and provides an exemption from the section for operational work that is tidal works.

Insertion of new s 4.3.6A

Clause 111 inserts a new section 4.3.6A (Coastal emergency exemption for operational work that is tidal works). The new section applies to operational work (the emergency work) that is tidal works, which normally would have required a development permit, and that is necessary to ensure the following are not, or are not likely to be, endangered by a coastal emergency—

(i) the structural safety of an existing structure for which there is a development permit for operational work that is tidal works; or

(ii) the life or health of a person; or

(iii) the structural safety of a building.

This section provides that sections 4.3.1, 4.3.3, 4.3.4 and 4.3.5 (development offence provisions) do not apply if a person has made and complies with a safety plan for the emergency works; takes reasonable precautions and exercises proper diligence to ensure the structure and emergency works are in a safe condition including commissioning a registered professional engineer to conduct an audit; and as soon as reasonably practicable makes a development application and gives the assessment manager written notice of the work and a copy of the safety management plan.

The exemption ceases to apply if the development application is refused. The person must then remove the emergency work as soon as practicable. It is an offence to fail to comply with requirement, with a maximum penalty of 1665 penalty units.

Insertion of new ch 6, pt 6

Clause 112 inserts a transitional provision that gives persons who are carrying out environmentally relevant activities for which it was intended that a development application be obtained under the transitional provisions of the *Environmental Protection Legislation Amendment Act 2003,* a period of twelve months grace before the offence provision in Section 4.3.1 applies. This gives persons who require a development approval due to the new triggers for material change of use under section 1.3.5 twelve months to apply for a development permit.

Amendment of sch 8 (Assessable development and self-assessable development)

Clause 113 inserts new tables with respect to assessable and self-assessable development for environmentally relevant activities. The changes include references to 'aspects of environmentally relevant activities'. This is to allow for the preparation of codes of environmental compliance that will only relate to certain specific types of activity within an ERA. These types of activity will be defined by criteria within each code. For example, a code may apply for only the lower threshold of a certain ERA.

Part 7 Amendment of Marine Parks Act 2004

Act amended in pt 7

Clause 114 states this part amends the *Marine Parks Act 2004*.

Amendment of s 21 (Zoning Plan)

Several minor amendments have been made to provisions relating to zoning plans. The amendments will reinstate such plans as subordinate legislation rather than regulations. The latter situation would result in a departure from the status of existing zoning plans and require the renaming of all plans.

Clause 115 amends section 21 to provide that the Governor in Council, rather than a regulation, may approve a zoning Plan.

Amendment of s 23 (Preparation of final plan)

Clause 116 amends section 23 to provide that the final zoning plan is subordinate legislation and does not have effect until the later of the following: either the day it is approved by the Governor in Council under section 21, or the commencement day stated in the plan.

Amendment of s 25 (Amendment of zoning plan)

Clause 117 amends section 25 to provide that the Governor in Council, rather than a regulation, may amend a zoning Plan, consistent with the changes in clause 59.

Amendment of s 27 (Preparation of final amendment)

Clause 118 amends section 27 to provide that the final amendment to the plan is subordinate legislation and does not have effect until the later of the following; either the day it is approved by the Governor in Council under section 25, or the commencement day stated in the plan.

Amendment of s 28 (Tabling of statement with zoning plan or amendment

Clause 119 amends section 28(2) consequential to the amendments in sections 21, 23, 25, and 27.

Amendment of s 43 (Entry or use for a prohibited purpose)

Section 43 makes it an offence for persons entering or using a marine park for a prohibited purpose. Under section 43(4), a prohibited purpose means a prohibited purpose prescribed under a regulation or a zoning plan. A maximum penalty of 90 penalty units applies to entering or using a marine park for a prohibited purpose that does not involve wilful conduct under section 43(2).

Clause 120 omits section 43(2) so that a range of minor offences and infringement notice offences can be introduced for each prohibited purpose listed under a regulation or zoning plan based on the seriousness of the activity. These offences need to be in a regulation to allow for their refinement as State and Commonwealth marine park regulations and zoning plans are progressively standardised.

Amendment of s 131 (Proceedings for indictable offence)

Clause 121 amends s 131(4) to increase the penalty cap for indictable offences, when dealt with summarily, to 1665 penalty units.

Amendment of s 155 (Existing zoning plans)

Clause 122 makes a minor wording change to section 155(2).

Insertion of new s 155A and s 156A

Clauses 123 and 124 insert transitional provisions allowing the making and approval of zoning plans and management plans under the repealed *Marine Parks Act 1982* to be continued. These will only apply to plans in

preparation before the commencement of the new 2004 Act. Specifically, this will enable the finalisation of the zoning plan for the proposed Great Sandy Marine Park, and the management plan for marine park areas surrounding Hinchinbrook Island and the Family Islands. The amendments are needed to overcome differences in planning requirements between the old and new Act, and enable the plans to be validly made without having to restart processes already under the provisions of the new Act.

Clause 123 inserts a new section 155A (Continuation of making and approval of zoning plan or amendment).

Clause 124 inserts a new section 156A (Continuation of preparation and approval of management plan).

Insertion of new s 156A

Clause 125 amends the schedule (Dictionary) definitions of *management plan* and *zoning plan* consequential to the changes made by clauses 123 and 124.

Part 8 Amendment of Mineral Resources Act 1989

Act amended in pt 8

Clause 126 states that this part amends the *Mineral Resources Act 1989*.

Amendment of s 64A (Issue of certificate of public notice)

Clause 127 clarifies the intent of a reference to the draft environmental authority in relation to the issuing of a certificate of public notice for an application for a mining claim. The draft environmental authority is not issued for a code compliant application and for the purposes of the public notice under section 211 of the *Environmental Protection Act 1994* (which is in division 6 of the Act), the relevant standard environmental conditions are taken to be the draft environmental authority.

The footnote to this section will also be corrected.

Amendment of s 252A (Issue of certificate of public notice)

Clause 128 clarifies the intent of a reference to the draft environmental authority in relation to the issuing of a certificate of public notice for an application for a mining claim. The draft environmental authority is not issued for a code compliant application and for the purposes of the public notice under section 211 of the *Environmental Protection Act 1994* (which is in division 6 of the Act), the relevant standard environmental conditions are taken to be the draft environmental authority.

The footnote to this section will also be corrected.

Amendment of s 391A (Restriction on decisions or recommendations about mining tenements)

Clause 129 inserts a new subsection 391A(6) to clarify the reference to the issuing of an environmental authority for code compliant applications. An environmental authority that is taken to have been issued under sections 164 or 168 of the *Environmental Protection Act 1994* is taken to be an issued environmental authority for the purposes of section 391A.

Part 9 Amendment of Nature Conservation Act 1992

Act amended in pt 9

Clause 130 states that this part amends the *Nature Conservation Act 1992*.

Amendment of s 34 (Leases etc. over protected areas)

Section 34 lists the types of authorities for which chief executive approval is required, also the exceptions (licences, permits or other authorities) that may be issued or given under a regulation.

Clause 131 adds agreements to the list of exceptions not requiring chief executive approval.

Amendment of s 45 (Conservation agreements)

Section 45 currently allows for a conservation agreement to be optional, where the Minister and landholder agree on declaring land as a nature

refuge. Clause 132 amends section 45(1) to require a conservation agreement where the Minister and landholder agree on declaring land as a Nature Refuge.

Clause 132 also amends section 45 so that a third party interest holder can only refuse consent to a conservation agreement if their interest is materially affected by the terms of the agreement. Currently such consent can be withheld even if the third party interest is not affected, and in one significant case this has occurred, putting at risk a 400ha nature refuge in a sensitive coastal area. Third party interests that are affected by the nature refuge will continue to be accommodated in the terms of the conservation agreement. The amended section will continue to protect third party interests but will remove the opportunity for vexatious situations to arise when no interest will be affected but the third party still refuses to consent to the agreement.

Amendment of s 62 (Restriction on taking etc. of cultural and natural resources of protected areas)

Clause 133 omits section 62(7), definition of *authorised person.*

Replacement of s 70R (Expiry)

The *Nature Conservation Act 1992* Part 4A (Forest Reserves) (section 70R) provided that forest reserve tenure expires in October 2006.

Clause 134 replaces the existing section 70R with a new section 70R that extends the expiry of forest reserves tenure to 31 December 2025. The amendment provides for the continued operation of the forest reserve tenure until 31 December 2025 as an interim holding tenure for State Forest (and *Land Act 1994* reserves and timber reserves) proposed to be dedicated as protected area. This amendment is necessary to facilitate Government commitments in relation to the transfer of land to protected area tenure as part of both the South East Queensland Forests Agreement and the State-wide Forests Process.

Amendment of s 88 (Restrictions on taking protected animal and keeping or use of unlawfully taken protected animal)

Clause 135 omits the definition of *authorised person*.

Amendment of s 88A (Restriction on keeping or use of lawfully taken protected animal)

Clause 136 omits section 88A(3).

Amendment of s 88B (Offence to keep or use native wildlife reasonably suspected to have been unlawfully taken)

The *Environmental Protection and Other Legislation Amendment Bill 2004* (EPOLA 2004) inserted a new section 88B that provides for an offence of keeping and using native wildlife reasonably suspected to have been unlawfully taken. In her reply speech during debate of EPOLA 2004, Minister Boyle committed to reviewing the wording of the provision in response to concerns about the complexity of the provision.

Clause 137 inserts two examples of the operation of this section (from a larger range of possibilities) to illustrate its operation. The examples do not change the meaning of the provision in any way.

Amendment of s 89 (Restriction on taking etc. protected plants)

Clause 138 omits section 89(5), definition of authorised person.

Amendment of s 90 (Restriction on using threatened or rare plants)

Clause 139 omits section 90(2).

Amendment of s 91 (Restriction on release etc. of international or prohibited wildlife)

Clause 140 omits section 90(2).

Amendment of s 97 (Restriction taking etc. of native wildlife in areas of major interest and critical habitats)

Clause 141 omits section 97(5).

Amendment of s 111 (Management plans)

Section 111(1)(b)(i) requires a management plan to be prepared as soon as practicable after the declaration of a nature refuge. However, if the nature refuge is the subject of a conservation agreement under which a

management plan is not to be prepared (section 49), the management plan is not required.

Clause 142 amends section 111 to provide that the Minister may, after the declaration of a nature refuge, and if the Minister and landholder agree it is required, prepare a management plan for the area. However, a management plan must be prepared if the declaration of the nature refuge occurred under section 49.

Amendment of s 135 (Chief executive may inquire into applications)

Clause 143 amends section 135 to remove any doubt that the Chief Executive can make inquiries about persons applying for leases and agreements under sections 34 to 37 of the Act, and about persons applying for or submitting Expressions of Interest for proposed Commercial Activity Agreements under the Nature Conservation Regulation.

Insertion of new ss 183A and 184B

The SEQFA planning area involves lands previously dedicated as State forest, managed under the *Forestry Act 1959*, to be transferred to the protected area estate. These lands are currently forest reserve, which is an interim tenure under the *Nature Conservation Act 1992*. Implementation of the SEQFA, including transfer of lands to protected area tenure was a 2001 Beattie government election commitment. Upon dedication of these lands to national park (recovery), horse riding would become an inconsistent use for the management of these lands, according to section 19A.

The conversion of these lands to national park (recovery) tenure without special provision for the temporary continuation of horse riding in specific areas will result in significant loss of access opportunities for horse-riding groups. The phase-out of horse riding in these areas provides the Government time to identify viable alternative trails for the horse-riding community. Similar amendments have previously been made to the *Nature Conservation Act 1992* to allow for the transition of grazing, beekeeping and foliage harvesting where these non-conforming uses have been allowed to continue for a specified period of time for the purposes of business re-adjustment.

Clause 144 inserts a new section 183A that allows for horse riding to occur for up to 9 years but not later than 24 November 2013, on specific SEQFA lands after their dedication to national park (recovery).

Clause 144 also inserts a new section 183B. This provision transitions stock grazing permits issued for forest reserves under section 35 of the *Forestry Act 1959* by deeming them to be a previous use authority under section 36 of the *Nature Conservation Act 1992*. The purpose of this amendment is to allow stock grazing activities authorised under the *Forestry Act 1959* to continue uninterrupted for the unexpired term of the permit when lands are transferred through to protected area as part of the SEQFA agreement. The provision significantly reduces administration requirements and allows EPA to continue to administer stock grazing according to the conditions and administrative processes that apply to *Forestry Act 1959* stock grazing permits. EPA will continue to collect yearly base rental fees that are charged by permit conditions and administrative arrangements in the *Forestry Act 1959* Stock Grazing Permits.

Amendment of Schedule (Dictionary)

Clause 1456 amends the dictionary terms for *authorised person* and *State land*.

Part 10 Amendment of Queensland Heritage Act 1992

Act amended in pt 10

Clause 146 states this part amends the *Queensland Heritage Act 1992.*

Amendment of s 35 (Application for exemption certificate)

Government agencies and local governments are often trustees of reserves, parks and roads and despite not being the legal owners are for practical purposes the body responsible for the maintenance and upkeep. In these circumstance it is not intended that the government agency or local government would be required to have the consent of the owner, the Chief Executive administering the *Lands Act 1994,* to make an application for an exemption certificate.

Clause 147 amends s 35 of the *Queensland Heritage Act 1992* to enable any person whether they are trustee, occupier, lessee or local government to make application to the Heritage Council for an exemption certificate.

Replacement of s 37 (Council may give certificate of exemption without application)

Clause 148 amends section 37 so that the Heritage Council can give local government and government agencies, when they are trustees, exemption certificates without the trustees having applied under section 35.

Amendment of s 38 (Exemption certificate for liturgical purposes)

Clause 149 corrects a minor numbering error.

Amendment of s 39 (Heritage agreements)

Clause 150 inserts a new definition of *owner*, of a registered place, as including a local government or government entity who is the trustee of the place.

Amendment of schedule (Dictionary)

Clause 151 inserts a new definition of *government entity*, with reference to the *Public Service Act 1996*.

Part 11 Amendment of Statutory Instruments Act 1992

Act amended in pt 11

Clause 152 states this part amends the *Statutory Instruments Act 1992*.

Amendment of sch 2A (Subordinate legislation to which part 7 does not apply)

Clause 153 exempts the Wet Tropics Management Plan 1998 from expiry.

A fuller explanation of the Regulatory Impact Statement requirements under the *Statutory Instruments Act 1992* and the consultation requirements under the *Wet Tropics World Heritage Protection and Management Act 1993* is provided in the General Outline section of these Explanatory Notes.

Part 12 Amendment of Wet Tropics World Heritage Protection and Management Act 1993

Act amended in pt 12

Clause 154 states this part amends the *Wet Tropics World Heritage Protection and Management Act 1993*.

Amendment of s 4 (Definitions)

Clause 155 provides that the definitions in section 4 will be relocated to a new schedule 3 in line with current drafting practice. The definitions of *native wildlife, plant, rare wildlife* and *threatened wildlife*, are cross references to definitions in the *Nature Conservation Act 1992* which were relocated from section 7 of that Act, to the schedule in that Act by the *Nature Conservation and Other Legislation Amendment Act 2000.*

The definition of agreement has been updated to refer to the agreement that has been in place since 15 December 1995.

Amendment of s 53 (Review of plans)

Clause 156 amends the review requirements of the Wet Tropics Management Plan from once after the first seven years to once every ten years. A fuller explanation of the Regulatory Impact Statement requirements under the *Statutory Instruments Act 1992* and the consultation requirements under the *Wet Tropics World Heritage Protection and Management Act 1993* is provided in the General Outline section of these Explanatory Notes.

Replacement of sch 1 (Wet Tropics World Heritage Area Management Scheme)

Clause 157 inserts the text of the current agreement between the parties of the Wet Tropics Ministerial Council that was made on 15 December 1995.

Insertion of new sch 3

Clause 158 inserts a new schedule of key definitions for the Act.

Part 13 Other amendments of Acts

Amendments in schedule

Clause 159 states the schedule makes minor amendments to the Acts it mentions.