Environmental Protection and Other Legislation Amendment Bill 2010

Explanatory Notes

General Outline

Short Title

The short title of the Bill is the Environmental Protection and Other Legislation Amendment Bill 2010.

Policy Objectives of the Legislation

The principal objectives of the Bill are to amend:

- The *Coastal Protection and Management Act 1995* to: implement the new Queensland Coastal Plan; implement the adopted recommendations of the Webbe-Weller Review of statutory bodies; implement the Government's planning reform agenda; and clarify provisions dealing with the allocation of quarry materials from tidal waters.
- The *Environmental Protection Act 1994* to: expand the types of court orders available and apply them to a broader range of environmental offences; introduce a new requirement for operators of mobile and temporary activities to keep a work diary; expand certain authorised officer powers; and introduce new offences for providing false, misleading or incomplete information.
- The *Queensland Heritage Act 1992* to improve the process for amending and updating details of places on the Queensland Heritage Register.
- The *Recreation Areas Management Act 2006* to: provide a more secure investment framework for commercial operators by extending the maximum term of commercial activity agreements from 10 to 15 years; and an amendment to exempt commercial filming and

photography activities undertaken by one or two people where no structures are involved, from needing a commercial activity permit.

- A number of Acts administered by the Department of Environment and Resource Management to provide for flexibility in the execution of warrants.

The remaining amendments are minor or technical and necessary to provide for effective and efficient administration and enforcement of the legislation.

Reasons for the objectives and how they will be achieved

The Bill makes amendments to various Acts administered by the Department of Environment and Resource Management for the purposes of streamlining legislative processes, providing regulatory simplification, and improving enforcement tools, officer powers and penalties.

Coastal Protection and Management Act 1995

Amendments to the *Coastal Protection and Management Act 1995* are generally a result of the statutory review of the *State Coastal Management Plan 2001*, and are essential to support the implementation of its replacement, the proposed Queensland Coastal Plan (QCP). The QCP addresses sustainable development of the Queensland coast and includes provisions for managing the social and economic risks of climate change and coastal hazards for planning for coastal-dependant development, and for the preservation of social and ecological values.

The QCP will remove duplication and overlap with other legislation. Implementation of the QCP requires minor legislative changes including enabling the coastal zone and coastal management district to be mapped using property boundaries and to provide greater clarity in the allocation of rights to remove quarry material from tidal waters.

Minor amendments to the objectives of the Act will ensure greater focus on coastal hazards in land use decisions near the coast as hazards become more significant due to climate change-related sea level rise and increased intensity of storms and cyclones.

To align the Act with the Government's Planning Reform Agenda, provisions in the Act relating to regional coastal management plans have been removed. Instead, regional plans made under the *Sustainable Planning Act 2009* will be relied on to implement the State Planning Policy component of the QCP.

Amendments clarify the current provisions of the Act concerning allocation of quarry materials from tidal waters including the considerations for granting an allocation to remove quarry materials under tidal waters, and the reasons for refusing a request to renew an existing allocation. The changes will also reduce complexity in the assessment process for tidal works applications that inadvertently trigger the need for a resource allocation for the removal of quarry materials.

Amendments are also necessary to implement adopted recommendations of the Webbe-Weller review of statutory bodies, entitled "Brokering Balance: A Public Interest Map for Queensland Government Bodies - An Independent Review of Queensland Government Boards, Committees and Statutory Authorities". The Government accepted the review recommendations to abolish the Coastal Protection Advisory Council and regional coastal planning committees which are set up under this Act.

Environmental Protection Act 1994

Amendments to the *Environmental Protection Act 1994* improve the operation and effectiveness of various provisions by: clarifying the intent of some provisions; introducing and amending definitions; removing unnecessary process; improving authorised officer powers, offence provisions and enforcement tools; introducing new requirements to keep a work diary for mobile and temporary environmentally relevant activities (ERAs) (e.g. mobile concrete batching, abrasive blasting, asphalt plants, crushing and screening) and introducing new types of court orders following prosecution for certain offences.

Amendments will provide contemporary and flexible penalty options on sentencing for certain environmental offences, and expand the circumstances for which court orders can be made. The amendments will allow the Court to make orders for a range of environmental offences which do not require environmental harm to have been caused e.g. offences relating to the contravention of a development condition or condition of an environmental authority. The range of orders available to the Court are being expanded to include: Public Benefit Orders – to restore or enhance the environment in a public place or for the public benefit; Education Orders – to conduct an advertising or education campaign; Monetary Benefit Orders – to pay a sum up to the amount of the monetary benefit derived from the offence; and Publication and Notification Orders – to publish details of the offence and the orders made by the court, e.g. in a newspaper or in a company's Annual Report. These orders complement the

existing penalty options and will help provide a more effective deterrent for environmental offences.

Operators of Chapter 4 ERAs require a development permit under the *Sustainable Planning Act 2009* and a registration certificate under the *Environmental Protection Act 1994*. Chapter 4 ERAs do not include mining and petroleum activities as these activities are not regulated under the *Sustainable Planning Act 2009*. Chapter 4 ERAs include, for example, motor vehicle workshops, chemical manufacturing, metal refinery and beverage production. Amendments provide that a person cannot apply for a registration certificate until a development permit has taken effect. This will prevent unintended breaches of the legislation when people mistakenly believe that the registration certificate is an approval to operate. This will save industry money as the first year's annual fee for the registration certificate is waived if the application is made within 30 days after the development permit takes effect.

Amendments to provisions relating to objections decisions about an environmental authority application from the Land Court streamline the process and reduce delays in deciding applications.

A transitional environmental program (TEP) is an enforcement tool used to achieve compliance with the Act over a stated period of time. Amendments provide further clarification about the content and compliance requirements for a TEP. This will improve the operation of this enforcement tool to ensure compliance is achieved.

Mobile and temporary ERAs are not permitted to operate at a single place for more than 28 days. Amendments require operators of mobile and temporary ERAs to keep a work diary. A work diary will provide the administering authority with certainty that the activity is operating lawfully. Amendments introduce a new offence (100 penalty units) for not keeping a work diary. This offence is equivalent to a similar penalty under the *Environmental Protection Act 1994* for failing to keep required agricultural records.

Currently, it is unlawful to deposit litter at a place unless the person is an occupier of the place, has consent of an occupier or deposits litter in a bin provided by an occupier. This offence is difficult to enforce for a vehicle littering offence as it requires the authorised officer to prove that a person littering on a road was not an occupier, or did not have the occupier's consent. The offence provision is amended by this Bill to provide that the occupier exemption does not apply to a person who litters on a road. A

person who deposits litter on a road may still claim reasonable excuse which, if proved, means they are not liable for the offence. This is consistent with the operation of other offences.

Amendments expand the powers of an authorised person to enable the authorised person, by written notice, to require a person to attend an interview at a place to answer questions. An offence is being introduced consistent with the existing offence for not answering questions. It is a reasonable excuse to fail to answer questions if a person might incriminate themselves. The amendment provides clarity that this excuse only applies to individuals and not corporations. This is consistent with the common law position that self-incrimination does not apply to corporations.

New offences are introduced for providing false, misleading or incomplete information and in instances where a person ought reasonably to have known the information was false, misleading or incomplete. The penalties are consistent with others of a similar nature under the Act.

Provisions that allow people to apply for an exemption from disclosure of information submitted under the *Environmental Protection Act 1994* are removed as protection is now provided through the *Right to Information Act 2009*.

Other amendments relate to minor and technical matters to improve administration of the Act. These include: providing that a fee must be submitted with an Environmental Impact Statement (EIS); clarifying the timing of the notification and publication processes for an EIS; providing a definition of non-commercial for local government activities; and amending definitions. Necessary transitional provisions will also be introduced.

Marine Parks Act 2004

Amendments remove the current uncertainty about whether an authorised person is exempt from needing a permit to undertake day-to-day management activities within the park. Amendments provide that the chief executive and authorised persons do not require permission to undertake activities under the Act, and to ensure officers are protected from prosecution for such activities. The amendments simplify administration of the *Marine Parks Act 2004* and are consistent with similar provisions of the *Nature Conservation Act 1992*.

Queensland Heritage Act 1992

Amendments to the *Queensland Heritage Act 1992* improve the process for amending and updating details of places on the Queensland Heritage Register. Other minor amendments are made to: provisions relating to applications to include a place on the register; ensure notification of new heritage places in the Government Gazette; and ensure that a maintenance work notice can be issued requiring termite treatment of a place.

The amendments to replace the term 'registered place' with 'Queensland heritage place' throughout the legislation, including in the dictionary, require consequential amendments to the *Mineral Resources Act 1989*, *Sustainable Planning Act 2009*, *Transport Infrastructure Act 1994* and the *Urban Land Development Authority Act 2007* to reflect this change.

Recreation Areas Management Act 2006

Minor amendments to the *Recreation Areas Management Act 2006* include an amendment to exempt commercial filming and photography activities undertaken by one or two people where no structures are involved, from needing a commercial activity permit. This will simplify regulatory and permitting processes for industry, community and government. These small-scale activities have minimal impact and the regulatory cost of administering these activities outweighs any benefits from issuing the permits.

A minor amendment is being made to provisions for commercial activity agreements (CAA) to enable a more secure investment environment for commercial operators, by extending the maximum term of CAAs from 10 to 15 years.

Other Amendments

The *Aboriginal Cultural Heritage Act 2003*; *Environmental Protection Act 1994*; *Marine Parks Act 2004; Nature Conservation Act 1992*; *Queensland Heritage Act 1992*; *Recreation Areas Management Act 2006*; *Torres Strait Islander Cultural Heritage Act 2003;* and the *Water Supply (Safety and Reliability) Act 2008* are amended to provide flexibility in the execution of warrants, consistent with comparable provisions of the *Vegetation Management Act 1999* and the *Water Act 2000*. The amendments enable a Magistrate to issue a warrant to any authorised person and to allow the execution of the warrant by any authorised person. The change allows flexibility in that the authorised person who obtains the warrant need not be the authorised person who executes the warrant.

The remaining amendments proposed by the Bill are minor, technical or miscellaneous amendments necessary to provide for effective and efficient administration and enforcement of the legislation.

A number of minor consequential amendments are also made to the *Mineral Resources Act 1989, Sustainable Planning Act 2009, Transport Infrastructure Act 1994* and the *Urban Land Development Authority Act 2007*.

Alternatives to the Bill

There are no other viable alternatives that would achieve the policy objectives other than the proposed Bill.

Estimated Cost for Implementation

The amendments are to be implemented within current budget allocations.

Consistency with Fundamental Legislative Principles (FLPs)

Powers for entry, search and seizure in the Environmental Protection Act 1994

The amendment to section 453 raises the FLP that legislation should confer power to enter premises, and for or seize documents or other property, only with a warrant issued by a judge or other judicial officer, unless appropriate safeguards are provided.

The amendment of section 453 extends the power of an authorised person to enter land not only when unlawful environmental harm has been caused by the release of a contaminant, but when an authorised person believes on reasonable grounds that unlawful environmental harm has been caused by the release of a contaminant. The entry provision enables the authorised person to gain entry to land without consent or a warrant. However, to obtain entry without consent, five business days written notice must be given under section 455, and the provisions do not apply to land where a building is erected.

In addition, the entry is constrained to determining the source of a contaminant without the need to first prove that environmental harm has been caused. The amendment is necessary to ensure that environmental harm does not impact on the community, including the health of the community. The amendment enables an authorised person to enter land on

the belief that harm has been caused and enables samples to be taken to support and confirm whether environmental harm has been caused.

Consultation

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

Feedback was considered as part of the drafting of the Bill.

Results of consultation

Community and industry stakeholders

No public consultation was undertaken on the Bill. However, the government did consult stakeholders about key changes proposed to the *Coastal Protection and Management Act 1995*. This occurred as part of the consultation process for releasing the draft Queensland Coastal Plan (draft coastal plan) for formal public comment between August and November 2009. In addition, the Queensland Heritage Council was consulted on amendments to the *Queensland Heritage Act 1992*, and no issues were raised. Key industry stakeholders were consulted on the *Environmental Protection Act 1994*, and no further changes were required.

Government

Consultation with relevant State agencies was undertaken on the draft Bill prior to introduction.

Notes on Provisions

Part 1 Preliminary

Clause 1 Short title

This clause states that the Act should be cited as the *Environmental Protection and Other Legislation Amendment Act 2010*.

Clause 2 Commencement

This clause provides which sections of the Bill will commence by proclamation. The remaining sections of the Bill commence on assent.

Part 2 Amendment of Aboriginal Cultural Heritage Act 2003

Clause 3 Act amended

This clause states that this part amends the *Aboriginal Cultural Heritage Act 2003.*

Clause 4 Amendment of s 131 (Issue of warrant)

This clause amends section 131 of the *Aboriginal Cultural Heritage Act 2003* to provide that, where a Magistrate issues a warrant under this section, the warrant may state that any authorised officer may enter the place and exercise the officer's powers. Currently, section 131 is limited to the Magistrate issuing a warrant to a stated authorised officer, usually the authorised officer who seeks the warrant. Since warrants are often sought in a different place to where they are executed, this limits the effective

functioning of the Act, since the person who seeks the warrant must execute the warrant. This amendment allows for flexibility in the execution of the warrant by any authorised officer and brings these warrant provisions in line with provisions in the *Vegetation Management Act 1999* and the *Water Act 2000*. Note that the warrant must still be executed by an authorised officer under this Act.

Clause 5 Amendment of s 133 (Warrants—procedure before entry)

This clause amends section 133 of the *Aboriginal Cultural Heritage Act 2003* to ensure that any authorised officer entering a place under a warrant must follow the procedure in this section before entry. This amendment is consequential to the amendment of section 131.

Clause 6 Amendment of s 138 (Seizing evidence at a place that may only be entered with consent or warrant)

This clause amends section 138 of the *Aboriginal Cultural Heritage Act 2003* to insert the words ‘under a’ warrant. This amendment is consequential to the amendment of section 131.

Part 3 Amendment of Coastal Protection and Management Act 1995

Clause 7 Act amended

This clause states that this part amends the *Coastal Protection and Management Act 1995*.

Clause 8 Amendment of s 3 (Main objects of Act)

This clause amends section 3(c) of the *Coastal Protection and Management Act 1995* to include an objective requiring that decisions made about land use and development have regard to the protection of life and property from the impacts of hazards such as coastal erosion and tidal inundation.

Clause 9 Replacement of s 4 (How coastal management is to be achieved)

This clause replaces section 4 of the *Coastal Protection and Management Act 1995* with a new section 4. The new section 4 introduces the concept of a single coastal plan which identifies coastal resources and policies for coastal management for the entire State of Queensland. The new section also points to declaring erosion prone areas for which provisions are already outlined within the Act. The new section also mandates monitoring, reporting and review of the policies and programs established to achieve the objectives of the Act and inform the revision of those policies and programs.

Clause 10 Replacement of s 11 (Meaning of *coastal management*)

This clause amends section 11 of the *Coastal Protection and Management Act 1995* to change the meaning of coastal management to refer specifically to the coastal zone and coastal resources. It also provides separately for the two major components of coastal management being firstly, the protection, conservation, rehabilitation and management of the coastal zone and resources; and secondly, the ecologically sustainable development of the coastal zone.

Clause 11 Replacement of s 15 (Meaning of *coastal zone*)

This clause replaces section 15 of the *Coastal Protection and Management Act 1995*. The new section 15 changes the meaning of coastal zone to

reference all Queensland waters and land within an area shown on the coastal zone map. For the area shown as the coastal zone, this clause also provides that the coastal zone includes the airspace above and subsoil beneath the area shown as the coastal zone on the coastal zone map.

Clause 12 Insertion of new ch 1, pt 3A

This clause inserts a new chapter 1, part 3A into the *Coastal Protection and Management Act 1995* to define and provide for the preparation, certification, commencement, replacement and provision of copies of the coastal zone map that shows the coastal zone.

Part 3A Coastal zone map

Section 18A What is the *coastal zone map*

New section 18A(1) states that that the coastal zone map that the chief executive certifies is a map showing the coastal zone.

Section 18A(2) states that in showing the coastal zone, the coastal zone is limited to coastal waters (separately defined) and land and Queensland waters, but landward of coastal waters and seaward of the coastal zone inner limit

Section 18A(3) provides that the landward boundary of the coastal zone (the coastal zone inner limit) is 5km landward of the coastline (high-water mark) or where the land reaches the height of 10m Australian Height Datum, whichever extends further inland.

Section 18A(4) provides that the landward boundary of the coastal zone (in the case where the imaginary line intersects a lot) can be aligned with a property boundary as shown by the cadastre.

Section 18B Amending the coastal zone map

New section 18B provides for amending the coastal zone map by replacing the existing map with a new map of the coastal zone that is certified as replacing the existing map of the coastal zone.

Section 18C When coastal zone map takes effect

New section 18C specifies that the coastal zone map (including a replacement coastal zone map) does not take effect until a regulation approves the map. The regulation must state the date on which the map was certified by the chief executive.

Section 18D Public inspection and purchase of coastal zone map

New section 18D requires that the chief executive must make the coastal zone map available for inspection and purchase by the public and publish the electronic version of the coastal zone map on the Department of Environment and Resource Management's website.

Clause 13 Replacement of ch 2, pts 1 and 2

This clause replaces chapter 2, parts 1 and 2 of the *Coastal Protection and Management Act 1995* with a new part 1. Consistent with the recommendations of "Brokering Balance: A Public Interest Map for Queensland Government Bodies - An Independent Review of Queensland Government Boards, Committees and Statutory Authorities" report, provisions to establish the Coastal Protection Advisory Council or Regional Consultative Groups are removed by this amendment. This clause also replaces the provisions relating to State and Regional coastal management plans with provisions about making a single coastal plan for the coastal zone.

Part 1 Coastal plan

Division 1 Requirement for coastal plan

Division 1 sets out the requirements for a coastal plan.

Section 20 Coastal plan must be prepared

New section 20 requires the preparation of a coastal plan for the coastal zone by the Minister.

Section 21 Content of coastal plan

New section 21 sets the parameters for the content of the coastal plan. Section 21 requires that the coastal plan describe how the coastal zone is to be managed and the matters which must be considered by the Minister in the preparation of the coastal plan (public access to the foreshore and the effect of climate change).

Section 21 also provides for the inclusion of a coastal State planning instrument which provides for the protection, conservation and ecologically sustainable development of the coastal zone and requires that decisions made about land use and development have regard to the protection of life and property from the impacts of hazards such as coastal erosion and tidal inundation. The coastal plan may also include a map (or series of maps) showing coastal resource information. It may also include requirements for the management of coastal resources and as well as requirements for land management with policies directed at land managers in the coastal zone.

Section 22 Process for making, amending or replacing coastal plan

New section 22 inserts a procedural direction that compliance with the process stated in subsequent divisions (2 and 3) must be achieved when making, amending or replacing a coastal plan. Section 22 also makes

provision for additional requirements to be followed in accordance with a regulation when making, amending or replacing a coastal plan.

Section 23 Compliance with divs 2 and 3 and regulation under s 22(2)

New section 23 provides for "substantial compliance" with the stated process (divisions 2 and 3) in relation to making, amending or replacing a coastal plan, provided any non-compliance does not adversely affect public awareness of the coastal plan or restrict the opportunities for the public to make properly made submissions with respect to making, amending or replacing a coastal plan.

Division 2 Making coastal plan

Division 2 sets out the process for the preparation of a coastal plan. The process for the preparation of a coastal plan generally follows the same process outlined for making, amending or replacing a State planning instrument under the *Sustainable Planning Act 2009*.

Section 24 Preparation of draft coastal plan

New section 24 requires the preparation of a draft of the coastal plan prior to making the coastal plan.

Section 25 Notice about draft coastal plan

New section 25 sets out the requirements for publication of notices regarding the draft coastal plan, the consultation period and who must be given a copy of the draft coastal plan and make it available for inspection.

Section 26 Keeping draft coastal plan available for inspection

New section 26 requires that the Minister make available a copy of the draft coastal plan for inspection (and purchase) for all of the consultation period (40 business days).

Section 27 Making coastal plan

New section 27 requires that the Minister consider all properly made submissions about the draft coastal plan. After the submissions have been considered, the Minister can make the coastal plan with or without amendment.

Section 28 Notice about making coastal plan

New section 28 sets out the requirements for publication of notices regarding the making of the coastal plan and distribution of the coastal plan.

Division 3 Amending or replacing coastal plan

Division 3 sets out the process for amending or replacing a coastal plan.

Section 29 Administrative amendments

New section 29 makes provision for the Minister to make an administrative amendment (defined elsewhere) of the coastal plan without having to undertake further public consultation as Division 2 does not apply to the making of an administrative amendment to the coastal plan. Section 29 sets out the requirements for publication of notices regarding the amendment of the coastal plan.

Section 30 Other amendments

New section 30 allows for the Minister to make amendments (other than administrative amendments) to the coastal plan where the process contained in Division 2 (relating to making a draft coastal plan and coastal plan) is followed. In this instance, a reduced consultation period of 20 business days applies.

Section 31 Replacement of coastal plan

New section 31 allows the Minister to replace an old coastal plan with a new coastal plan by following the process contained in Division 2 (relating to making a draft coastal plan and coastal plan).

Division 4 When coastal plan or amendment has effect

Division 4 specifies when a coastal plan or amendment takes effect.

Section 32 When coastal plan or amendment has effect

New section 32 specifies when a coastal plan or an amendment to a coastal plan takes effect. Specifically the date of effect is the date that a notice about making a coastal plan or an amendment to a coastal plan is gazetted, or a later date of commencement if specified in the notice, plan or amendment.

Section 33 Duration of coastal plan

New section 33 provides that a coastal plan made under Division 2 ceases to have effect on the day the coastal plan is replaced under Division 3, or 10 years after the day the coastal plan had effect. This 10 year period aligns the coastal plan with the provisions for State Planning Policies under section 45 of the *Sustainable Planning Act 2009* and with general legislative standards about an appropriate "life" for a statutory instrument.

It is intended that a review of the relevant coastal plan be commenced 8 years after the day the State Planning Policy had effect.

Under subclauses (2) and (3), the life of a coastal plan may be extended by a regulation, to a maximum period of 12 years after the day the coastal plan had effect. This provision is intended to ensure that the life of a coastal plan can be extended if, due to unforseen and exceptional circumstances (such as a machinery of government change which occurs when the coastal plan is 9 years old), the coastal plan can not be reviewed within the usual 10 years.

Division 5 Miscellaneous

Division 5 includes provisions relating to the implementation and effect of a coastal plan, and opportunities for public inspection and purchase of the coastal plan.

Section 34 Implementation of coastal plan

New section 34 requires the chief executive to implement the coastal plan and makes provision for the chief executive to arrange for other entities to carry out activities relating to implementation of the coastal plan. This may include asking a relevant entity to take coastal management into account when making decisions about land use, development and management of land in the coastal zone.

Section 35 Effect of coastal plan

New section 35 defines coastal plans as statutory instruments in accordance with the *Statutory Instruments Act 1992*.

Section 36 Public inspection and purchase of coastal plan or draft coastal plan

New section 36 sets out the requirements for the coastal plan (and any draft coastal plan) to be published on the department's website and to be made

available for inspection by the public and the means by which a copy of the coastal plan (and any draft coastal plan) may be purchased.

Clause 14 Amendment of s 54 (Declaration of coastal management districts)

This clause amends section 54(1) of the *Coastal Protection and Management Act 1995* regarding declaration of coastal management districts to remove reference to regional coastal management plans. It has the effect of limiting the areas which may (under a regulation) be declared as coastal management districts to areas within the coastal zone if the Minister believes the area requires protection or management.

Clause 15 Omission of s 55 (Where coastal management districts may be declared)

This clause removes existing section 55 of the *Coastal Protection and Management Act 1995* that outlines where a coastal management district may be declared. Improvements in mapping capability and the removal of regional coastal management plans (that were previously used to identify coastal wetland and dune systems and key coastal sites) has resulted in these references becoming outdated. In addition, the coastal management district may need to extend further inland than the prescribed distances to manage development in areas that will become at risk of coastal erosion from projected sea level rise as a result of climate change. Coastal management districts are to be declared for areas of the coastal zone that require specific management or planning responses. In future, the matters listed for section 56 will be used to direct the location of a coastal management district.

Clause 16 Amendment of s 56 (Things to be considered when declaring coastal management districts)

This clause amends section 56(d) of the *Coastal Protection and Management Act 1995* by replacing the aspect “natural hazards” with the more relevant “coastal hazards” in relation to matters to be considered

when declaring coastal management districts. Coastal hazard is defined elsewhere to mean erosion of the foreshore or tidal inundation.

This clause also inserts section 56(h) to include an additional matter to be considered when declaring coastal management districts, being the need to conserve, protect or rehabilitate coastal ecological systems or geomorphic features.

Clause 17 Amendment of s 57 (Notice declaring, changing or abolishing coastal management district)

This clause amends section 57 of the *Coastal Protection and Management Act 1995* to refer to section 54(1) that provides for an area being declared as a coastal management district by regulation.

Clause 18 Amendment of s 58 (Amendment, amalgamation and abolition of coastal management districts)

This clause amends section 58 of the *Coastal Protection and Management Act 1995* to refer to section 54(1) that provides for an area being declared as a coastal management district by regulation.

Clause 19 Amendment of s 59 (Coastal protection notices)

This clause amends section 59(2)(b) of the *Coastal Protection and Management Act 1995* to clarify when the chief executive can give a coastal protection notice. A coastal protection notice (separately defined) to stop (or not start) an activity can be given where that activity is causing, or is likely to cause, wind erosion or an adverse effect on coastal resources.

Clause 20 Amendment of s 60 (Tidal works notices)

This clause amends existing section 60 of the *Coastal Protection and Management Act 1995* to include the protection of coastal resources as grounds for the issue of a tidal works notice. The clause also clarifies who

may be given a tidal works notice and that a tidal works notice may be directed at tidal works or a structure for which the works were undertaken. The clause also allows for renumbering of subsections.

Clause 21 Amendment of s 68 (Temporary occupation of land)

This clause amends section 68 of the *Coastal Protection and Management Act 1995* to remove reference to 'a coastal plan' and inserts in its place 'the coastal plan'. This amendment is a consequential administrative amendment.

Clause 22 Amendment of s 69 (Damaging vegetation)

This clause amends the heading of section 69 of the *Coastal Protection and Management Act 1995* from "Damaging vegetation" to "Damaging or removing vegetation or damaging coastal dunes".

This clause also amends section 69 of the *Coastal Protection and Management Act 1995* to provide protection for dunes (in addition to vegetation) and clarify that the offence refers only to State coastal land above the high-water mark. The section is also amended to clarify the meaning of damage to exclude minor damage to dunes or vegetation. For example, minor damage may occur to a dune due to a normal beach related activity such as a child playing with sand.

Clause 23 Amendment of s 73 (Applications for allocation of quarry material)

This clause amends section 73 of the *Coastal Protection and Management Act 1995* to refer to quarry material in tidal waters as opposed to quarry material below the high-water mark. This ensures regulation of the removal of quarry material under the *Coastal Protection and Management Act 1995* complements and does not overlap with the regulation of the removal of quarry materials from watercourses under the *Water Act 2000*.

Clause 24 Amendment of s 75 (Criteria for deciding applications)

This clause amends section 75 of the *Coastal Protection and Management Act 1995* to replace the reference to the superseded State Coastal Plan and the Regional Plans in subsection (1)(a) of the *Coastal Protection and Management Act 1995* with a reference to the 'the coastal plan'.

This clause also amends subsection 75(3)(a) of the *Coastal Protection and Management Act 1995* to clarify that the chief executive can consider the economic use of State resources when deciding applications for allocations.

This clause also amends 75(3)(d) to meet current drafting practices.

This clause also amends 75(3)(e) to remove reference to 'under tidal water' in relation to removal or placement of quarry material within the limits of a port.

Clause 25 Amendment of s 77 (Selling allocation of quarry material by auction or tender)

This clause amends subsection (1) of section 77 of the *Coastal Protection and Management Act 1995* to refer to quarry material below tidal waters as opposed to below the high water mark. This ensures regulation of the removal of quarry material under the *Coastal Protection and Management Act 1995* complements and does not overlap with the regulation of the removal of quarry materials from watercourses under the *Water Act 2000*. Subsection (2) is also amended to provide that the chief executive can consider the impact the removal of quarry material or placement of spoil may have on coastal management, as well as other matters mentioned in section 75.

Clause 26 Amendment of s 78 (Content of allocation notices)

This clause amends subsection 78(c) of the *Coastal Protection and Management Act 1995* to clarify that the allocation notice is to state either the royalty or the price payable for the removal of quarry material. This ensures that allocation notices can state the price payable where the price

differs from the royalty rate specified in the regulation because, for example, the price was determined via tender or auction as provided for in section 77.

Clause 27 Amendment of s 79 (Conditions of allocation notice)

This clause amends section 79 of the *Coastal Protection and Management Act 1995* to clarify the range of matters the chief executive can impose conditions about on an allocation notice. Additional examples include conditions about the royalty or price payable for the removal of quarry material and information to be given about the rate of extraction.

Clause 28 Amendment of s 80 (Allocation holder to give information)

This clause amends section 80 of the *Coastal Protection and Management Act 1995* to insert a new subsection (2) to require the holder of an allocation notice to give written notice of the quantity of quarry material removed in compliance with any conditions imposed on the allocation notice, or otherwise within 20 business days after the end of a quarter, in order to be consistent with any conditions imposed under section 79(2)(e).

This clause also inserts a new subsection (3) to define "quarter" as a 3 month period ending on either 31 March, 30 June, 30 September, or 31 December, of any year.

Clause 29 Amendment of s 82 (Transferring allocations)

This clause amends the heading for section 82 of the *Coastal Protection and Management Act 1995* from "Transferring allocations" to "Application to transfer allocation" to make it clear that a holder of an allocation notice needs to make an application for transferring an allocation. This clause also replaces subsections 82(3) to (7) of the *Coastal Protection and Management Act 1995* with a new subsection 82(3) & subsection 82(4). The new subsection 82(3) provides for the chief executive to ask the applicant to provide additional information or documents about the

application. The new subsection 82(4) states that the application lapses if the information requested under subsection (3) is not provided by the stated day.

Clause 30 Insertion of new s 82A

This clause inserts a new section 82A into the *Coastal Protection and Management Act 1995* which sets out the requirements for the chief executive to decide the application to transfer an allocation. Note there are no merits based appeals or reviews available for decisions made under this provision and this raises a question regarding the fundamental legislative principle about whether the legislation has sufficient regard to the rights and liberties of individuals. This approach has been taken as it is a decision about a resource that the State owns and the amendment is consistent with the other existing provisions for other similar decisions, such as a decision to grant an allocation.

Section 82A Deciding application to transfer allocation

Section 82A includes:

— a requirement for the chief executive to make a decision and give a notice on the decision on the application within 30 days of receiving the application or, if further information or documents are requested, the further information or documents

— a requirement for the chief executive to decide whether to approve the transfer or the varied transfer, with or without conditions, or refuse the transfer

— a requirement for the chief executive to consider the impact the transfer may have on coastal management, as well as other matters mentioned in section 75.

Clause 31 Amendment of s 83 (Renewing allocations)

This clause amends the heading of section 83 of the *Coastal Protection and Management Act 1995* from "Renewing allocations" to "Application to renew allocation". This clause makes it clear that a holder of an allocation

notice needs to make an application for renewing an allocation, and that the chief executive has the power to condition or refuse an application to renew an allocation.

This clause also replaces subsections 83(3) to (7) of the *Coastal Protection and Management Act 1995* with new subsections 83(3) and 83(4). The new subsection 83(3) provides for the chief executive to ask the applicant to provide additional information or documents about the application. The new subsection 83(4) states that the application lapses if the information requested under subsection (3) is not provided by the stated day.

Clause 32 Insertion of new s 83A

This clause inserts new section 83A into the *Coastal Protection and Management Act 1995*. Section 83 sets out the requirements for the chief executive to decide the application to renew an allocation which mirrors the process for deciding an initial application for an allocation of quarry materials. Note there are no merits based appeals or reviews available for decisions made under this provision and this raises a question regarding the fundamental legislative principle about whether the legislation has sufficient regard to the rights and liberties of individuals. This approach has been taken as it is a decision about a resource that the State owns and the amendment is consistent with the other existing provisions for other similar decisions, such as a decision to grant an allocation.

Section 83 Deciding application to renew allocation

Section 83A includes:

— a requirement for the chief executive to make a decision and give a notice on the decision on the application within 30 days of receiving the application or, if further information or documents are requested, the further information or documents

— a requirement for the chief executive to decide whether to approve the renewal or the varied renewal, with or without conditions, or refuse the renewal

— a requirement for the chief executive to consider the impact the renewal may have on coastal management, as well as other matters mentioned in section 75.

After deciding the application, the chief executive is to give written notice of the decision, including the reasons for the decision if the renewal was varied, conditions were attached to the renewal or the renewal was refused.

Clause 33 Omission of ch 2, pt 5, div 2

This clause removes Chapter 2, part 5, division 2 of the *Coastal Protection and Management Act 1995* which contains the provisions providing an allocation and associated development permit approval via a dredge management plan. Dredge management plans are being removed as they are typically under-utilised as a policy tool because they do not serve to effectively streamline the assessment process. Dredge management plans will continue to be used as a tool for managing dredging operations through the coastal plan but will no longer be used to turn off the Integrated Development Assessment System process under the *Sustainable Planning Act 2009*. Other provisions to improve assessment processes for development applications that also involve quarry material allocations are included in this Bill.

Clause 34 Renumbering of ch 2, pt 5, div 2A

This clause renumbers Chapter 2, part 5, division 2A to Chapter 2, part 5, division 2. This is a consequential administrative amendment.

Clause 35 Amendment of s 100A (Removal of quarry material is subject to other approvals)

This clause amends section 100A of the *Coastal Protection and Management Act 1995* to remove all references to dredge management plans due to the omission of dredge management plans from the Act (refer clause 33 above).

Clause 36 Omission of s 100B (Relationship with Planning Act)

This clause omits section 100B of the *Coastal Protection and Management Act 1995* to remove all references to the relationship between dredge

management plan and the Planning Act due to the omission of dredge management plans in the Act (refer clause 33 above).

Clause 37 Amendment of s 101 (Removing quarry material)

This clause amends subsection 101(1) and subsection 101(2) of the *Coastal Protection and Management Act 1995* regarding the requirements for removal of quarry material as a consequence to amendments made in Part 5 (Quarry materials), including:

— replacing references to 'high water mark' with tidal waters; and

— removing references to dredge management plans.

Clause 38 Amendment of s 102 (Royalty or price for quarry material)

This clause removes section 102 of the *Coastal Protection and Management Act 1995* which refers to a royalty associated with a dredge management plan due to the omission of dredge management plans (refer clause 33 above).

Clause 39 Insertion of new s 104B

Section 104B Applications for operational works involving removal of quarry material

This clause inserts a new section 104B into the *Coastal Protection and Management Act 1995* which relates to applications for operational work (tidal works) which also involves the removal of quarry material from tidal waters as a consequence of undertaking the tidal works.

Section 104B(2)(a) provides that where section 104B(1)(a) and (b) have been met, the application for tidal works is taken to also be an application for an allocation of quarry material in accordance with section 73(2) of the *Coastal Protection and Management Act 1995*. This is the case despite the Planning Act ordinarily requiring such an application only be made if supported by evidence that the development was consistent with an existing allocation or entitlement to the quarry material.

Section 104B(2)(b) provides that the procedures relating to the approval of an application for allocation of quarry material (contained in chapter 2, part 5, division1) will apply to the application for operational works (tidal works) involving removal of quarry materials.

This provision will allow for decisions about the allocation of quarry material to be considered concurrently with the development assessment process instead of only being able to be considered sequentially. This will improve process efficiency.

Section 104B(3) clarifies that a fee is not payable in relation to section 73(2)(b) of the *Coastal Protection and Management Act 1995*.

Clause 40 Omission of s 105 (Declaration for Planning Act, ss 282, 313 and 314)

This clause removes section 105 of the *Coastal Protection and Management Act 1995* which references the Planning Act. The references to the Planning Act are no longer considered necessary to retain as the coastal plan will now include a state planning instrument prepared jointly under the *Coastal Protection and Management Act 1995* and the *Sustainable Planning Act 2009*. The coastal plan will therefore be readily identifiable as a policy to be applied by an assessment manager or relevant concurrence agency.

Clause 41 Omission of s 108 (Development approvals–conditions for development partly in a coastal management district)

This clause removes section 108 of the *Coastal Protection and Management Act 1995* as the *Sustainable Planning Act 2009* already establishes the extent to which a development can be conditioned.

Clause 42 Amendment of ch 2, pt 6, div 3, hdg (Land surrender conditions)

This clause amends the heading of chapter 2, part 6, division 3 of the *Coastal Protection and Management Act 1995* so that the division applies to all provisions for land surrender.

Clause 43 Amendment of ch 2, pt 6, div 3, sdiv 2, hdg (Land surrender)

This clause amends the heading for division 3, subdivision 2 of the *Coastal Protection and Management Act 1995* so that the subdivision applies specifically to land surrender.

Clause 44 Amendment of s 110 (Governor in Council may approve inclusion of land surrender condition)

This clause amends section 110 of the *Coastal Protection and Management Act 1995* to replace reference to the Governor in Council with reference to the Minister as the person who may approve inclusion of land surrender conditions. This aligns the land surrender application, assessment and decision process with Integrated Development Assessment System assessment procedures under the *Sustainable Planning Act 2009*, as well as *Land Title Act 1994* and *Land Act 1994* requirements.

Clause 45 Amendment of s 111 (Notice of condition about land surrender)

This clause amends section 111(3) of the *Coastal Protection and Management Act 1995* to require that the Integrated Development Assessment System process under the Planning Act stops on the day the notice is given to the applicant and assessment manager, rather than is received by the applicant. This achieves consistency in the section by providing for the Integrated Development Assessment System process to both stop and start on the day a notice is given by the chief executive.

Clause 46 Amendment of s 113 (Notice of decision about land surrender)

This clause amends section 113(2)(b)(i) of the *Coastal Protection and Management Act 1995* as a consequence of the amendment to section 110, which replaces the Governor in Council with the Minister as the person who may approve inclusion of land surrender conditions. This aligns the land surrender application, assessment and decision process with

Integrated Development Assessment System assessment procedures under the *Sustainable Planning Act 2009*, as well as *Land Title Act 1994* and *Land Act 1994* requirements.

Clause 47 Insertion of new ch 2, pt 6, div 3, sdivs 3 and 4

This clause inserts Chapter 2, part 6, division 3, subdivision 3 (Voluntary land surrender) and 4 (Giving effect to surrender) into the *Coastal Protection and Management Act 1995*.

Subdivision 3 Voluntary land surrender

Section 115A Applicant may surrender land voluntarily

New section 115A provides for voluntary surrender of land to the State for coastal management purposes as part of a development application that relates to the coastal management district. This would allow an applicant to identify a parcel of land to be surrendered to the State for coastal management purposes on a voluntary basis, without needing to seek the Minister's approval for imposition of a land surrender condition.

Subdivision 4 Giving effect to surrender

Section 115B Surrendered land to be dedicated for coastal management purposes

New section 115B provides that when surrendering of land occurs either voluntarily or through the imposition of a land surrender condition, the plan of subdivision for the development to be registered under the *Land Title Act 1994* must dedicate the surrendered land for coastal management purposes.

It also provides that once this plan of subdivision is registered, the surrendered land will automatically be dedicated as a reserve under the *Land Act 1994* as a reserve for coastal management purposes.

This can occur without the Minister's specified endorsement or consent as would otherwise be required under the *Land Title Act 1994*.

The provision also provides that the trustee for the reserve will be the relevant local government where the local government approves the subdivision and endorses its trusteeship of the reserve. However, where this is not the case the trustee for the reserve would be the State.

Subsection (6) provides that the registrar under the *Land Act 1994* must keep a record of the reserve.

Clause 48 Amendment of s 120C (Chief executive may give exemption certificate without application)

This clause amends section 120C of the *Coastal Protection and Management Act 1995* to clarify that the exemption certificate can be given with or without conditions.

Clause 49 Insertion of new s 120CA

This clause inserts a new section 120CA into the *Coastal Protection and Management Act 1995* in relation to compliance with conditions.

Section 120CA requires a person who holds an exemption certificate to comply with the conditions imposed on the exemption certificate. The maximum penalty of 165 penalty units applying to breaches of the exemption certificate conditions is consistent with the maximum penalty for breaches of compliance permits for section 576 (Compliance with compliance permit or compliance certificate) of the *Sustainable Planning Act 2009*.

Clause 50 Replacement of ss 123 and 124

Section 123 Right to occupy and use land on which particular tidal works were, or are to be, carried out

This clause replaces the existing section 123 to clarify the circumstances in which a development permit for operational work which is tidal works located wholly or partly on State tidal land (as defined) confers a right to occupy and use the State tidal land on which the tidal works are located, despite the *Land Act 1994*.

The first circumstance (section 123(1)(b)(i)) relates to work which is undertaken by or on behalf of the owner or occupier of land which adjoins the State tidal land. An occupier would include a leasehold land owner for example.

The provision confers upon the owner or occupier of the land abutting tidal waters the right to occupy and use the state tidal land for constructing and using the tidal works such as a jetty, mooring pile, pontoon or domestic pipeline (inter alia).

Section 123(3) clarifies that the provisions of section 123(1)(b)(i) do not extend to works or structures to facilitate a commercial enterprise. For example, a cruise shipping terminal or another commercial facility for which tidal works were undertaken are specifically excluded from the application of the right to occupy and use state tidal land under the provisions of section 123(1)(b)(i).

The second circumstance (section 123(1)(b)(ii)) relates to work which is undertaken by or on behalf of a public utility provider for the purpose of providing a public utility service. The example provided is the construction of infrastructure across a waterway for the provision of electricity, gas or telecommunication services.

The third circumstance (section 123(2)) relates to works that are for public infrastructure. An example of public infrastructure would include a public jetty or a sea wall established to protect public infrastructure such as a road.

Section 123(4) clarifies that the relevant person (and/or their authorised representative) for the works referred to in section 123(1) and (2) has the right to occupy and use the state tidal land to carry out the tidal works (in accordance with the development permit) and maintain and use the

structure/s, which in some instances comprise the tidal works without needing to obtain tenure under the *Land Act 1994*.

It is implicit to section 123(4) that the right to occupy and use the State tidal land lapses if and when the development permit lapses. In the event that the works are not substantially started prior to the end of the currency period of the development permit, the right to occupy and use the State tidal land lapses when the development permit lapses. If the works are completed or substantially completed within the currency period of the development permit, the right to occupy and use the State tidal land lapses when the works are removed or destroyed.

It should be noted that the definition of tidal works contained in the schedule (Dictionary) is amended to include 'demolition' (clause 57(3)). Hence, the right to occupy and use land on which works proposed for demolition are situated would be granted through the giving of a development permit for the demolition work.

Section 123(5) provides definitions for public infrastructure, public utility provider and relevant person. The definition for public infrastructure is a broad reference to any infrastructure provided for public use, for example, a boardwalk provided for free public enjoyment. Public infrastructure may be provided by a local government or another entity including a commercial entity.

With reference to the definition of a relevant person, a development permit attaches to land. Consequently, if the ownership of a freehold property changes, any subsequent owner of the land becomes the relevant person for any tidal works adjacent that are wholly or partly on State tidal land. Likewise at any particular time, the current occupier of occupied land is the relevant person for any tidal works adjacent to the occupied land.

For public infrastructure, the relevant person would be the entity responsible for the public infrastructure such as a local government or other public infrastructure provider

Section 124 Obligation to keep particular structure in safe condition

Clause 50 also replaces the existing section 124 to include that the relevant person for a structure is obliged to maintain the structure in a safe condition

if they have a right to occupy and use State tidal land under section 123 for the structure.

In replacing the section, other obligations placed on persons responsible for tidal works to maintain structures in a safe condition have been maintained.

Clause 51 Amendment of s 144 (Indictable and summary offences)

This clause amends section 144 of the *Coastal Protection and Management Act 1995* to provide for a consequential amendment for administrative purposes to reference the new numbering of subsections in section 60 (Tidal works notices) following amendments to section 60.

Clause 52 Amendment of s 150 (When compensation is payable)

This clause amends section 150 of the *Coastal Protection and Management Act 1995* to remove reference to 'a coastal plan' and insert in its place 'the coastal plan'. This is a consequential administrative amendment.

Clause 53 Amendment of s 160 (How to start appeal)

This clause amends section 160 of the *Coastal Protection and Management Act 1995* to reference the new numbering of subclauses in section 60 (Tidal works notices). This is a consequential administrative amendment.

Clause 54 Amendment of s 165 (Delegation by chief executive)

This clause amends section 165 of the *Coastal Protection and Management Act 1995* to delete reference to the Coastal Protection Advisory Council. This is a consequential amendment.

Clause 55 Amendment of s 167 (Regulation-making power)

This clause amends section 167 of the *Coastal Protection and Management Act 1995* to remove references to 'a coastal plan' and inserts in its place 'the coastal plan'. This is a consequential administrative amendment.

Clause 56 Insertion of new ch 6, pt 6

This clause inserts the transitional provisions which prevail during the adoption phase of proposed amendments to the *Coastal Protection and Management Act 1995*.

Section 195 Definition for pt 6

New section 195 contains a definition for pt 6 of 'previous'. Previous means the provision which was in force immediately prior to adoption of the proposed amendments.

Section 196 Continuation of coastal zone

New section 196 states that the existing coastal zone remains in force until such time as a coastal zone map is available.

Section 197 Continuation of existing coastal plans

New section 197 states that existing coastal management plans remain in force until such time as the coastal plan takes effect.

Section 198 Dissolution of coastal protection advisory council

New section 198 states that the Coastal Protection Advisory Council will be dissolved upon adoption of the proposed amendments.

The Coastal Protection Advisory Council is being abolished in accordance with the recommendations of the Webbe and Weller Report 2009 "Brokering Balance: A Public Interest Map for Queensland Government Bodies - An Independent Review of Queensland Government Boards, Committees and Statutory Authorities", as a primary part of their role was the provision of advice regarding regional coastal management plans, which are also being abolished. Members of the council were paid sitting fees and travel allowances on a fee for service basis for the period of their term in accordance with a schedule set by the Governor in Council. There are no provisions under the current Act for members to be compensated in the event of changes to the term of service. This is consistent with the Fundamental Legislative Principles as Council members will not be called upon to undertake any further service. In addition, the contract for current members expires on 31 December 2010 and it is proposed that the provisions to abolish the Council will commence after this time.

Section 199 Application of s80 for existing allocations for quarry material

New section 199 sets out the transitional reporting requirements for existing allocation notices. In particular, monthly reporting required by the previous section 80(2) is to continue until the beginning of the first quarter following commencement of the amendment. This clause also defines 'quarter".

Section 200 Existing dredge management plan applications

New section 200 states that any application for approval of a dredge management plan which has been lodged, but not yet decided is to be assessed and decided under the provisions that were previously in place for dredge management plans. In addition, if a dredge management plan is subsequently approved, it continues in effect as if it the *Environmental Protection and Other Legislation Amendment Act 2010* had never commenced. This is necessary to ensure that any effort or expenditure outlaid in the preparation of a proposed dredge management plan is not wasted.

Section 201 Existing approved dredge management plans

New section 201 provides for existing approved dredge management plans to remain in force in the same manner as per the previous provision.

Section 202 Continuing effect of Governor in Council approval of land surrender condition

New section 202 clarifies that where a condition requiring land surrender (for coastal management purposes) in an erosion prone area or within 40 metres of the foreshore has previously been imposed by the Governor in Council (as a condition of a development permit for reconfiguration of a lot) the condition continues to apply as if it were a condition imposed by the Minister.

Clause 57 Amendment of schedule (Dictionary)

This clause amends the schedule (Dictionary) of the *Coastal Protection and Management Act 1995* to remove definitions for advisory council, key coastal site, regional plan and State plan from the Dictionary as these terms are no longer referred to in the *Coastal Protection and Management Act 1995*.

The clause replaces the existing definition of a coastal plan to mean a coastal plan made under chapter 2, part 1 of the amended Act.

The clause also inserts meanings in the schedule (Dictionary) for administrative amendment of (a coastal plan), coastal hazard, coastal zone map, Planning Minister, previous, and State tidal land.

The clause amends the meaning of "tidal works" to clarify that tidal works includes demolition of structures that are tidal works. The construction of buoy moorings has been specifically excluded from the definition of tidal works as this is regulated by the *Transport Operations (Marine Safety) Regulation 2004*.

Part 4 Amendment of Environmental Protection Act 1994

Clause 58 Act amended

This clause states that this part amends the *Environmental Protection Act 1994*.

Clause 59 Amendment of s 47 (When EIS may be submitted)

This clause amends section 47 of the *Environmental Protection Act 1994* to provide that, when an EIS is submitted, it must be submitted with the fee prescribed by the *Environmental Protection Regulation 2008*. Currently, a fee is required to be paid when submitting the draft terms of reference (section 41) and when amending an EIS (section 66).

This amendment means that a fee will now also be required when submitting the EIS. This will remove the need for the applicant to pay a total upfront fee as part of submitting the EIS terms of reference and then potentially receive a refund if the applicant does not proceed to the EIS stage. The amendment provides that the EIS fee is charged separate to the fee required for the terms of reference.

Clause 60 Amendment of s 51 (Public notification)

This clause amends section 51 of the *Environmental Protection Act 1994* to clarify that the notification requirements outlined in section 51(2) must happen in the order that they are written in the legislation.

The amendment will ensure that all affected and interested persons, and other stakeholders nominated under section 51(2)(a)(iii), will receive their written notice before the EIS notice is published in the newspaper.

This is necessary because proponents have been publishing the EIS notice required under section 51(2)(b) in the newspaper within a few days of receiving the section 49(5) notice from the department (which starts the 30 business day submission period for the EIS), but they sometimes have not

been notifying affected persons and other stakeholders until well into the submission period. This limits the opportunity for submitters to provide a submission on the EIS.

Clause 61 Amendment of s 73D (Application for registration to carry out chapter 4 activity)

This clause amends section 73 of the *Environmental Protection Act 1994* to insert a new subsection (2) that provides that a person can not apply to be a registered operator to carry out a chapter 4 activity that is assessable development until and unless a development permit for the activity takes effect.

Subsection (2) is intended to ensure that the development permit has taken effect for a chapter 4 activity before an application for a registration certificate is made for the activity. This will prevent unintended breaches of the legislation and minimise annual fees that applicants are currently paying for chapter 4 activities that cannot be operated lawfully.

For example, in some cases when a registration certificate has been applied for and granted before the development permit (the timeframe for deciding the certificate under the *Environmental Protection Act 1994* is generally only 10 business days), some operators mistakenly believe that the registration certificate is an approval which grants the right to undertake the activity. This can result in unintended breaches of the legislation.

This also creates a situation where the applicant has paid annual fees for their registration certificate but cannot lawfully commence the activity until the development permit has been granted and takes effect.

Subsection (2) does not affect applications already lodged or registration certificates already issued for chapter 4 activities in circumstances where the development permit has not taken effect.

Subsection (2) does not apply to self-assessable development (as defined by the *Sustainable Planning Act 2009*), since these activities do not require a development permit. For the purposes of the *Environmental Protection Act 1994*, self-assessable activities are those chapter 4 activities, or aspects of chapter 4 activities, which are operating under a code of environmental compliance. Hence there is no limitation on when an application can be made for a registration certificate for an activity to be carried out under a code of environmental compliance.

The current subsections (2) and (3) are renumbered to subsections (3) and (4) respectively.

Clause 62 Amendment of s 73F (Registration certificates)

The clause amends section 73F of the *Environmental Protection Act 1994* to insert a new subsection 73F(3)(b)(iii) to provide that a single registration certificate can be granted to a local government for environmentally relevant activities (ERAs) carried out at 2 or more places if the activities are not a significant business activity.

This replaces the current section 73F(3)(b)(iii) that required the administering authority to be satisfied that the activities are non-commercial. This created uncertainty due to differing interpretations about when activities are non-commercial and therefore when a single registration certificate (and consequently a fee discount) can or cannot be granted.

This clause inserts a definition of "significant business activity" which has the meaning given by the *Local Government Act 2009*, section 43.

A fee discount is available to local government for ERAs they carry out at 2 or more places if they are included on a single registration certificate. These discounts are not available for ERAs that are "significant business activities" (i.e. commercial activities) because of the anti-competitive nature of the fee discount.

It is intended that municipal activities that operate on a commercial basis or in competition with non-governmental operators do not accrue benefits as a result of their public ownership and are therefore not eligible to apply for a single registration certificate. This is consistent with the Competitive Neutrality policy element of the Competition Principles Agreement which is one of the three agreements under the National Competition Policy that Queensland became a signatory to in 1995.

Clause 63 Amendment of s 73G (When registration certificate takes effect)

This clause amends section 73G of the *Environmental Protection Act 1994* to remove subsection 73G(3). This is a consequential amendment to section 73D.

Clause 64 Insertion of new ch 4, pt 5A

This clause inserts the new Chapter 4, Part 5A into the *Environmental Protection Act 1994.*

Part 5A Work diary requirements for particular registered operators

This Part inserts new requirements for operators of mobile and temporary environmentally relevant activities to keep a work diary.

Section 73PA Application of pt 5A

New section 73PA states that this part applies to a registered operator carrying out a chapter 4 activity that is a mobile and temporary environmentally relevant activity, unless the activity is regulated waste transport.

This section does not apply to regulated waste transport as these operators would always be mobile and temporary environmentally relevant activities by definition in the *Environmental Protection Act 1994*, so would never trigger a material change of use application under the *Sustainable Planning Act 2009*. Therefore recording their work in a work diary would not result in any change to the type of approval under the *Sustainable Planning Act 2009*, unlike other mobile and temporary environmentally relevant activities.

Section 73PB Requirement to keep a work diary

New section 73PB inserts a new requirement for operators of mobile and temporary environmentally relevant activities to keep a work diary in an approved form so that the administering authority and operator can easily monitor the activity to determine whether the activity continues to meet the requirements for a mobile and temporary environmentally relevant activity.

Part of the definition of mobile and temporary environmentally relevant activity in schedule 4 of the *Environmental Protection Act 1994* requires that the activity is carried out at any 1 of the locations for less than 28 days in a calendar year. If an operator does not meet this requirement (or the other requirements outlined in the definition) they are not a mobile and temporary environmentally relevant activity.

If an operator does not meet this requirement (or the other requirements outlined in the definition) they are not a mobile and temporary environmentally relevant activity and would trigger a material change of use under the *Sustainable Planning Act 2009*.

Without reference to any records of the activity, it is difficult for the administering authority to determine if the activity meets the requirements for a mobile and temporary environmentally relevant activity.

Section 73PB(1) establishes an offence if a registered operator for a mobile and temporary environmentally relevant activity does not keep a work diary in the approved form.

The maximum penalty for the offence is 100 penalty units which is consistent with other similar offences under the *Environmental Protection Act 1994* including section 83 which requires operators of agricultural environmentally relevant activities to keep records of their activities.

Section 73PB(2) sets out that the approved form must provide for the inclusion of details of each location at which the mobile and temporary environmentally relevant activity is carried out, and the dates on which the activity is carried out.

Section 73PB(3) provides that a registered operator must record the information required under the approval form within 1 day after the day the operator vacates each location at which the activity is carried out. This ensures accurate compliance checks can be made if necessary. Section 73PB(3) includes a maximum penalty of 100 penalty units which is

consistent with other similar offences under the *Environmental Protection Act 1994*.

Section 73PB(4) states that the diary must be kept for 2 years after the day on which the operator vacates the last location at which the activity was carried out unless the operator has a reasonable excuse. Section 73PB(4) includes a maximum penalty of 100 penalty units which is consistent with other similar offences under the *Environmental Protection Act 1994*.

The clause commences on a date to be set by proclamation.

Section 73PC Requirement to notify chief executive if work diary lost or stolen

New section 73PC provides that a registered operator who becomes aware that the operator's work diary has been lost or stolen must, within 7 business days, give the chief executive written notice that the diary has been lost or stolen, unless the operator has a reasonable excuse.

This offence has a maximum penalty of 50 penalty units. This penalty unit amount is based on other similar offences in the *Environmental Protection Act 1994* in relation to providing written notice about a matter (for example, refer to sections 371, 363, 348, 444A).

Clause 65 Amendment of s 197 (Summary of pt 6 process)

This clause amends section 197 of the *Environmental Protection Act 1994* to correct an anomaly in the processes for notifying the *Mineral Resources Act 1989* (MRA) and the *Environmental Protection Act 1994* (EPA) Ministers about an objections decision. This amendment is consequential to the amendments to sections 222, 224 and 225.

Clause 66 Amendment of s 222 (Nature of objections decision)

This clause amends section 222 of the *Environmental Protection Act 1994* to correct an anomaly in the processes for notifying the *Mineral Resources Act 1989* (MRA) and the *Environmental Protection Act 1994* (EPA) Ministers about an objections decision.

Section 222 applies to an objections decision for an application for an environmental authority. All dealings with environmental authorities are under the EPA Minister.

The amendment to section 222(1) is to provide that the objections decision for the application must be a recommendation to the EPA Minister, not the MRA Minister.

Consequently, subsection (3) has also been amended to provide that the Land Court must, as soon as practicable after the decision is made, give a copy of the decision to the MRA Minister; and if a relevant mining lease is, or is included in, a significant project—the State Development Minister.

The State Development Minister has been included in subsection (3) as a consequential to the amendment in section 224.

Clause 67 Amendment of s 224 (Advice from MRA and State Development Ministers about objections decision)

This clause amends section 224 of the *Environmental Protection Act 1994* and provides that advice from the *Mineral Resources Act 1989* (MRA) and State Development Ministers about the objections decision must be provided to the *Environmental Protection Act 1994* (EPA) Minister within 10 days after the copy of the decision is received under section 222, or if the Ministers have, within the 10 business days, agreed to a longer period - the advice must be provided within the agreed timeframe.

The current process whereby the EPA Minister writes to the MRA and State Development Ministers to seek their advice on the objectives decisions has been removed to streamline and simplify the advice process, reduce administrative burden on government, and reduce possible delays (and costs) in deciding applications.

Clause 68 Amendment of s 225 (EPA Minister's decision on application)

This clause amends section 225 of the *Environmental Protection Act 1994* and provides that the *Environmental Protection Act 1994* (EPA) Minister's decision on the application must be made within either 10 business days

after the last advice by a Minister is received under section 224(2), or 20 business days after the objections decision is made (whichever is later).

The purpose of this amendment is to simplify the advice process, reduce administrative burden on government and industry, and reduce possible delays (and costs) in deciding applications.

Clause 69 Amendment of s 322 (When environmental audit required)

This clause amends section 322 of the *Environmental Protection Act 1994* and provides that in addition to other matters outlined in section 322(1), an environmental audit may be required if a person is, or has been, contravening section 363E, section 440Q, section 440ZG, or a provision of chapter 8, part 3D, 3E or 3F.

This amendment follows amendments made to the *Environmental Protection Act 1994* and subordinate legislation which commenced on 1 January 2009 to transfer and update offences that were previously in the *Environmental Protection Regulation 1998,* the *Environmental Protection (Air) Policy 1997* and the *Environmental Protection (Water) Policy 1997*. Prior to the transfer of these provisions, the provisions under section 322(1)(c) allowed an environmental audit requirement to be made in relation to a contravention of a regulation or environmental protection policy.

This amendment will ensure that the grounds for requiring an environmental audit continue to apply to those equivalent transferred offences (i.e. sections 363E, 440Q, 440ZG, and provisions of chapter 8, part 3D, 3E or 3F).

Clause 70 Replacement of s 330 (What is a transitional environmental program)

This clause deletes the current section 330 and inserts a new section 330 into the *Environmental Protection Act 1994.*

Section 330 What is a transitional environmental program

New section 330 replaces the current section 330 to provide clear direction about what a transitional environmental program is and the purpose of a transitional environmental program.

The amendment clearly states that a ***transitional environmental program*** is a specific program that, when complied with, achieves compliance with this Act for the activity to which it relates by doing 1 or more of the following—

(a) reducing environmental harm caused by the activity;

(b) detailing the transition of the activity to an environmental standard;

(c) detailing the transition of the activity to comply with—

(i) a condition, including a standard environmental condition, of an environmental authority or code of environmental compliance; or

(ii) a development condition.

This amendment is part of a suite of amendments to transitional environmental program provisions that will provide greater certainty to holders of the approvals and the administering authority about the content, application and enforceability of the programs.

Clause 71 Replacement of s 331 (Content of program)

This clause deletes the current section 331 and inserts a new section 331 into the *Environmental Protection Act 1994*.

Section 331 Content of program

New section 331 replaces the current section 331 to provide greater transparency and certainty about what is required in a transitional environmental program.

This amendment includes requirements for the transitional environmental program to state details about:

— objectives to be achieved or maintained under the program;

— the actions required to achieve these objectives and the timeframe by when each action must be carried out;

— how any environmental harm will be prevented or minimised including any interim measures;

— any specific environmental standard the activity is required to transition to and how that is to be achieved before the program ends;

— any condition of an environmental authority or development condition the activity is required to transition to and how that is to be achieved before the program ends;

— the period of which the program is to be carried out;

— appropriate performance indicators; and

— monitoring or reporting on compliance with the program.

This amendment will ensure that, by clearly stating the requirements of a transitional environmental program, there is greater certainty as to what constitutes a breach of the program, and the program can be more effectively audited.

Clause 72 Amendment of s 333 (Voluntary submission of draft program)

This clause amends section 333 of the *Environmental Protection Act 1994* to provide that a person or public authority may voluntarily submit a draft program if the program contains or provides for the matters mentioned in section 331.

This amendment ensures that transitional environmental programs that are required to be submitted under section 332 'Administering authority may require draft program' and programs that are voluntarily submitted under section 333 meet the same content requirements.

Clause 73 Replacement of ss 339 and 340

This clause replaces sections 339 and 340 of the *Environmental Protection Act 1994*.

Section 339 Decision about draft program

New section 339 replaces the existing section 339 to more clearly set out the options available to the administering authority when making a decision about the program, including imposing any conditions.

The administering authority may approve the program as submitted, or as amended at the request, or with the agreement, of the administering authority.

The administering authority may refuse to approve the program.

The administering authority may impose on an approval of a program any conditions that the authority must impose under a regulatory requirement and any other conditions the authority considers appropriate.

If the administering authority approves the program the program remains in force for the period stated in the notice given under section 340.

Section 340 Notice of decision

New section 340 replaces the existing section 340 in relation to giving notice of the decision.

The administering authority must within 8 business days after making the decision under section 339 give a written notice about the decision.
If the administering authority approves the program, the notice must:

— identify the documents forming the approved program, including any amendments;

— state any conditions imposed on the approval; and

— state the day the approval ends.

If the administering authority refuses to approve the program or approves the program with conditions, the notice must be an information notice. This means that the review and appeal provisions of the Act will apply.

Section 341 Content of approved program

This section clarifies that an approved transitional environmental program consists of:

(a) the draft of the program submitted under section 332 or 333, as amended at the request, or with the agreement, of the administering authority; and

(b) any conditions imposed on the program by the administering authority.

This amendment will ensure that, by clearly stating the content of an approved program there is greater certainty as to what the program contains, what constitutes a breach of the program, and the program can be more effectively audited.

Clause 74 Amendment of s 358 (When order may be issued)

This clause amends section 358 of the *Environmental Protection Act 1994* and provides that, in addition to other matters outlined in section 358(d), an environmental protection order may be issued to secure compliance with section 363E, section 440Q, section 440ZG, or a provision of chapter 8, part 3D, 3E or 3F.

This amendment follows amendments made to the *Environmental Protection Act 1994* and subordinate legislation on 1 January 2009 to transfer and update offences that were previously in the *Environmental Protection Regulation 1998*, the *Environmental Protection (Air) Policy 1997* and the *Environmental Protection (Water) Policy 1997*. Prior to the transfer of these provisions, the provisions under section 358(d) allowed an environmental protection order to be issued to secure compliance with an environmental protection policy or regulation.

This amendment will ensure that the grounds for issuing an environmental protection order continue to apply to those equivalent transferred offences (i.e. sections 363E, 440Q, 440ZG, and provisions of chapter 8, part 3D, 3E or 3F).

Clause 75 Amendment of s 365 (Person may show cause why financial assurance should not be required for transitional environmental program or site management plan)

This clause amends section 365 of the *Environmental Protection Act 1994* and is consequential to the new section 440 and reflects the amended reference to an approval notice for a transitional environmental program.

Clause 76 Amendment of s 432 (Contravention of program)

This clause amends section 432 of the *Environmental Protection Act 1994* to clarify that it is an offence to contravene a requirement of a transitional environmental program. This means that enforcement action may be taken once any one requirement is breached, rather than arguably having to wait until the entire program is at an end.

Clause 77 Insertion of new s 432A

This clause inserts new section 432A into the *Environmental Protection Act 1994*.

Section 432A Contravention of condition of approval

New section 432A introduces a new offence that a person must not contravene a condition of an approval of a transitional environmental program. A maximum penalty of 835 penalty units is provided. This penalty is consistent with the penalty for breaching a requirement of a transitional environmental program under section 432. The potential environmental harm for contravening a program is consistent with that for contravening a condition of a program.

Clause 78 Omission of s 440C (When deposit of litter unlawful)

This clause omits section 440C of the *Environmental Protection Act 1994*. This is a consequential amendment as a result of the amendment to section 440D.

Clause 79 Amendment of s 440D (Depositing litter)

This clause amends section 440D of the *Environmental Protection Act 1994* in relation to when depositing litter is an offence.

The amendment to section 440D(1) removes the term unlawfully as a consequential amendment to the insertion of new section 440D(1A).

New section 440D(1A) provides that the offence of depositing litter at a place (under section 440D(1)) without a reasonable excuse does not apply to a person who deposits litter at a place other than a road if –

(a) the person is an occupier of the place; or

(b) the person deposits the litter with the consent of an occupier of the place; or

(c) the person deposits the litter by placing it in a litter bin or other container provided by an occupier of the place for the purpose of depositing litter.

The insertion of section 440D(1A) subsections (a), (b) and (c) are consistent with the previous section 440C.

New section 440D(1A) clearly states that the section does not apply to a person who deposits litter on a road. The amendment raises the Fundamental Legislative Principle in relation to whether the legislation has sufficient regard to the rights and liberties of individuals by providing that littering in a litter bin or similar container on a road is no longer automatically exempt from the offence.

The amendment is justified on the basis of the need to remove uncertainty with the current provision, and that a reasonable excuse would still apply to provide an appropriate defence. It is currently arguable under section 440C that a person who litters from a vehicle on a road is an ‘occupier of a place’. This was never the policy intent, particularly as the person may not exercise lawful authority or control in relation to the road, and the

amendment addresses this issue. A reasonable excuse for littering on a road may include any of the reasons in section 440D(1A). The number of instances of a person who is acting appropriately having to raise a reasonable excuse is likely to be limited.

This amendment retains the definition for 'occupier' of a place from section 440D, and inserts a new definition for 'road'. The definition of road is adapted from the definition of road in the *Sustainable Planning Act 2009*.

Clause 80 Amendment of s 440L (Meaning of *audible noise*)

This clause amends section 440L of the *Environmental Protection Act 1994* and provides that the definition of audible noise in section 440L(1) includes a reference to 'an affected building'.

This amendment is required to correct an error that occurred as part of transferring this section from the *Environmental Protection Regulation 1998* and to clarify that, when assessing compliance against the noise standards that have audible noise components, the assessment is carried out at the affected building.

Clause 81 Amendment of s 453 (Entry of land—search, test, sample etc. for release of contaminant)

This clause amends section 453 of the *Environmental Protection Act 1994* relating to entry of land.

Section 453 currently limits entry by an authorised person to where unlawful environmental harm has been caused, to confirm the source of the contaminant that caused the harm.

The amendment provides that an authorised person may enter a land if they have a reasonable belief that unlawful environmental harm has been caused by the release of a contaminant into the environment.

The entry provision enables the authorised person to gain entry to land without consent or a warrant. However, the fundamental legislative principle is not breached because there are appropriate safeguards in place. To obtain entry without consent, five business days written notice must be

given under section 455, and the provisions do not apply to land where a building is erected.

The entry is necessary to determine the source of a contaminant without the need to first prove that environmental harm has been caused. This is necessary to ensure that environmental harm does not impact on the community, including the health of the community. This amendment enables an authorised person to enter land on the belief that harm has been caused and enables samples to be taken to support and confirm whether environmental harm has been caused.

The amendment provides for consistent powers of entry under existing section 454.

Clause 82 Amendment of s 455 (Entry of land for access)

This clause amends section 455 of the *Environmental Protection Act 1994* so that it also applies to entry of land under section 453.

Currently, an authorised person can cross the land (access land) for the purpose of entering other land (primary land) only if they are exercising the powers of entry to the primary land under sections 452. The entry provision enables the authorised person to gain entry to land without consent or a warrant. However, the fundamental legislative principle is not breached because there are appropriate safeguards in place. To obtain entry without consent, five business days written notice must be given under section 455, and the provisions do not apply to land where a building is erected.

This amendment provides that an authorised person may enter access land to get to primary land for the purpose of section 453 (Entry of land-search, test, sample etc. for release of contaminant).

This provides consistent application of section 455 for entry under section 452 and 453.

Clause 83 Amendment of s 456 (Warrants)

This clause amends section 456 of the *Environmental Protection Act 1994* to provide that where a Magistrate issues a warrant under this section the warrant may state that any authorised person may enter the place and

exercise the officer's powers. Currently this section is limited to the Magistrate issuing a warrant to a stated authorised person, usually the person seeking the warrant. Since warrants are often sought in a different place to where they are executed, this limits the effective functioning of the Act, since the person who seeks the warrant must execute the warrant. This amendment allows for flexibility in the execution of the warrant by any authorised person and brings these warrant provisions in line with provisions in the *Vegetation Management Act 1999* and the *Water Act 2000*. Note that the warrant must still be executed by an authorised person under this Act.

Clause 84 Amendment of s 465 (Power to require answers to questions)

This clause amends section 465 of the *Environmental Protection Act 1994* to extend the current powers of an authorised person to require a person to answer a question about a suspected offence, to also be able to require, by written notice, the person to attend a stated reasonable place at a stated reasonable time, to answer questions about the suspected offence.

This amendment also sets out the requirements for the notice.

This improves the enforcement of the *Environmental Protection Act 1994*. Examples of similar provisions are found in the following legislation:

- section 118BA *Environmental Planning and Assessment Act 1979* (NSW)
- sections 203 and 203A of the *Protection of the Environment Operations Act 1997* (NSW)

Clause 85 Amendment of s 473 (Failure to help authorised person—emergency)

This clause amends section 473 of the *Environmental Protection Act 1994* to replace 'person' with 'individual'. The definition of 'person' in the *Acts Interpretation Act 1954* includes a corporation as well as an individual. This amendment is required to clarify that this section only applies to individuals and not corporations.

This amendment will provide clarity that the rule of law relating to privilege against self-incrimination, does not apply to a company, but only to an individual.

This is consistent with the common law position that self-incrimination does not apply to corporations.

The amendment to subsections 473(4)(c) and (5) provides that new section 480A is relevant for the purpose of these subsections.

Clause 86 Amendment of s 476 (Failure to answer questions)

This clause amends section 476 of the *Environmental Protection Act 1994* to provide an offence for not attending a place to answer questions as a consequence of amendments to section 465.

This clause also amends section 476 to replace 'person' with 'individual' consistent with the amendment to section 473.

The definition of 'person' in the *Acts Interpretation Act 1954* includes a corporation as well as an individual. This amendment is required to clarify that this section only applies to individuals and not corporations.

This is consistent with the common law position that self-incrimination does not apply to corporations

Clause 87 Amendment of s 480 (False, misleading or incomplete documents)

This clause amends section 480 of the *Environmental Protection Act 1994* to insert a new offence where a person 'ought reasonably to know' that a document is false or misleading. Consequently, someone who made their best efforts to ensure they were giving correct information would not be prosecuted.

This places a greater onus on individuals to check information before it is passed onto the administering authority or authorised person. A penalty may apply in cases where due diligence has not been carried and false or misleading information is consequently provided to the administering authority or authorised person. The prosecution however would still be

required to prove that the person knew or ought reasonably to have known the information was false or misleading.

The new offence retains the maximum penalty of 1665 penalty units. Being a new offence, it raises the fundamental legislative principle in relation to whether the legislation has sufficient regard to the rights and liberties of individuals, however the offence is necessary to improve the operation of the *Environmental Protection Act 1994* and the penalty is appropriate for the nature and severity of the breach. in comparison to other equivalent offences.

This section also removes the reference to "incomplete" documents from this section since this aspect of the offence has been moved to a new offence provision in the new section 480A.

Clause 88 Insertion of new s 480A

This clause inserts new section 480A into the *Environmental Protection Act 1994*.

Section 480A Incomplete documents

New section 480A provides a separate offence for providing incomplete documents to the administering authority or authorised person which was previously contained in section 480. These sections have been separated due to ease of drafting.

The new section retains the current intent of section 480 in relation to incomplete documents and inserts a new offence if a person 'ought reasonably to know' if a document is incomplete.

This places a greater onus on individuals to check information before it is passed onto the administering authority or authorised person. A penalty may apply in cases where due diligence has not been carried and false or misleading information is consequently provided to the administering authority or authorised person. The prosecution however would still be required to prove that the person knew or ought reasonably to have known the document is incomplete. Consequently, someone who made their best efforts to ensure they were giving complete information would not be prosecuted.

The maximum penalty for this new offence is 1665 penalty units which is equivalent to the existing penalty for providing false, misleading or incomplete information.

The new offence and penalty raise the fundamental legislative principle in relation to whether the legislation has sufficient regard to the rights and liberties of individuals, however the offence is necessary to improve the operation of the *Environmental Protection Act 1994* and the penalty is appropriate for the nature of the offence in comparison to other equivalent offences.

Clause 89 Replacement of s 502 (Court may order payment of compensation etc.)

This clause replaces the existing section 502 of the *Environmental Protection Act 1994*.

Section 502 Court may make particular orders

New section 502 provides the Court with a variety of new orders upon convicting a person for particular offences.

The new orders are equivalent to the contemporary tools provided in other environmental jurisdictions. This will provide for a more flexible and proportionate sentencing response commensurate with the risk and circumstances of individual cases, enhance industry performance and provide greater environmental protection outcomes.

The court will have increased flexibility to make orders that are appropriate to the circumstances of the offence and tailored to achieve the objectives of the *Environmental Protection Act 1994* more effectively. A fine/custodial sentence is not always an adequate or appropriate punishment.

The ability to impose orders under the existing section 502 is limited to circumstances where in a proceeding for an offence against the *Environmental Protection Act 1994*, the Court finds the defendant has caused environmental harm by contravention of the *Environmental Protection Act 1994*. It is intended to broaden the scope of this section so the Court can impose orders for a wider range of environmental offences under Chapter 8 of the *Environmental Protection Act 1994*. There are

benefits from having access to the new orders as well as the existing provisions requiring the defendant to pay compensation.

These additional offences to which these new Court orders apply are:

— section 426 (Environmental authority required for mining activity);

— section 426A (Environmental authority required for chapter 5A activity);

— section 427 (Only registered operators may carry out chapter 4 activities);

— section 430 (Contravention of condition of environmental authority);

— section 435 (Offence to contravene development condition);

— section 435A (Offence to contravene standard environmental conditions);

— section 440ZG (Depositing prescribed water contaminants in waters and related matters).

The Court can currently impose limited orders under this section for these offences if the Court finds that the defendant has also caused environmental harm. However, because the elements of the above offences do not rely on proving environmental harm, it is unlikely that the Courts would ever make a finding that environmental harm has been caused merely to allow the orders to be issued. The expansion of this section to include proceedings for contraventions of the above sections, without the need to prove harm, will provide more flexibility for the Courts to issue orders that are appropriate for the offence.

For example, if a defendant is unlawfully operating an environmentally relevant activity without the required environmental authority or registration certificate (sections 426, 426A and 427), the Court may consider that a monetary benefit order is also appropriate. The operator may have benefited from operating the activity without the required approval (apart from other savings associated with a lack of environmental conditions etc) by not paying annual fees, which would lead to competitive advantages over other businesses of the same type. Having access to orders for this offence would also allow the court to order that the defendant pay an additional amount (in addition to the fine imposed for the original offence) that represents the monetary benefit the company derived from not paying the annual fees.

This section inserts the following new types of orders:

1. **Rehabilitation or restoration order** – which is an order requiring the person to take stated action to rehabilitate or restore the environment that was adversely affected because of the act or omission constituting the offence in relation to which the order is made.
2. **Public benefit order** - which is an order requiring the person to carry out a stated project to restore or enhance the environment in a public place or for the public benefit.
3. **Education order** – which is an order requiring a person to conduct a stated advertising or education campaign to promote compliance with the Act.
4. **Monetary benefit order** - which is an order requiring a person to pay an amount representing any financial or other benefit the person has received because of the act or omission constituting the offence.
5. **Notification order** - which is an order requiring a person to notify in a stated way a person, or class of person, of the act or omission constituting the offence and other stated information about the act or omission. Examples of a notification order include publishing details of the offence in the person's annual report or giving the notification to persons affected.

These orders are available in addition to or in lieu of any fine or custodial sentence that may be imposed. One or more orders may be made against the defendant. Whether an order is imposed by the Court is entirely at the discretion of the Court.

In addition to the orders the Court may, on application of the prosecution, require the defendant to: (a) pay to the other person an amount of compensation the court considers appropriate for the loss, reduction or damage suffered, or costs or expenses incurred; or (b) take stated remedial action the court considers appropriate.

The Court may order this if the Court finds that because of an act or omission constituting an offence, another person has:

a) suffered loss of income; or

b) has suffered a reduction in the value of, or damage to, property or;

c) has incurred costs or expenses in replacing or repairing property, or in preventing of minimising or attempting to prevent or minimise a loss or reduction or damage in relation to a) or b).

An order must state the time within which the order must be complied with.

The introduction of these new court orders following prosecution raises the fundamental legislative principle that consequences imposed by legislation should be proportionate and relevant to the actions to which the consequences are applied by the legislation. The legislation does not require the imposition of these orders but leaves it up to the Court's discretion to determine whether the order is proportionate and relevant to the actions which the consequences are applied.

For instance, a company may choose to breach its environmental authority and dispose of hazardous material illegally and accept a $100,000 fine, rather than dispose of the material properly and in an environmentally responsibly way which would have been much more expensive. In these circumstances, a monetary benefit order that accounted for the money saved by the company would have provided a much greater deterrent from this inappropriate practice.

Another example for which these court orders may be beneficial is where a person undertaking a large residential subdivision has released sediment to waters as a result of insufficient sediment and erosion control practices. This type of offence might be appropriate for the Court to issue an Education Order that requires the defendant to undertake an education campaign promoting the importance of installing appropriate erosion and sediment control devices as part of good building practices.

These new court orders may only be applied by the Court where the Court determines that imposition of the orders is appropriate. The orders have a reasonable connection to the type and severity of the breach for which they are imposed and only apply to offences where the penalty is 165 penalty units or more.

Section 502A Administering authority may take action and recover costs

New section 502A provides that if the person fails to comply with an order, the administering authority is able to carry out the work or take any action necessary to fulfil the requirements of the order and recover any reasonable costs of doing so as a debt. This section is intended to be used with the administering authority's discretion in cases where required works are necessary or urgent, for example where environmental harm is being caused.

Clause 90 Amendment of s 530 (Decision for other appeals)

This clause amends section 530 of the *Environmental Protection Act 1994* and is consequential to clause 92 which removes Chapter 12, part 3 (Exemption from disclosure).

Clause 91 Amendment of s 552 (What is the *application date* for application or TEP submission)

This clause amends section 552 of the *Environmental Protection Act 1994* in relation to the application date for a transitional environmental program submission. This amendment provides that if a transitional environmental program, including a voluntary transitional environmental program, is submitted that does not comply with section 331 the authority may require the transitional environmental program to be resubmitted. The application date for the decision changes based on the date of resubmission.

New subsection 552(4) provides that, where a transitional environmental program is submitted and the program does not comply with the content requirements of section 331, the authority may within 8 business days after the day the submission is made require the person to amend and resubmit a transitional environmental program that complies with section 331.

New subsection 552(5) provides that the application date in this circumstance is either the day that is 10 business days after the day the amended transitional environmental program is submitted to the authority or, if within 8 business days after the day the amended transitional environmental program is submitted the authority requires additional information relating to the amended transitional environmental program, the day the authority states is the application day in a written notice.

Clause 92 Omission of ch 12, pt 3 (Exemption from disclosure)

This clause removes Chapter 12, part 3 from the *Environmental Protection Act 1994.*

Chapter 12 is no longer necessary following the commencement of the *Right to Information Act 2009*. The protections provided for under the *Right to Information Act 2009* are sufficient to protect information and therefore these provisions are unnecessary.

Clause 93 Insertion of new ch 13, pt 17

This clause inserts the new Chapter 13, part 17 (Transitional provisions for the Environmental Protection and Other Legislation Amendment Act 2010), into the *Environmental Protection Act 1994*.

Part 17 Transitional provisions for the Environmental Protection and Other Legislation Amendment Act 2010

Section 666 Definitions for pt 17

New section 666 inserts definitions for 'amending Act', 'commencement' and 'unamended Act' for the purposes of this part.

Section 667 Existing EISs

New section 667 provides that an EIS submitted under section 47 of the *Environmental Protection Act 1994* before the commencement of clause 59 of this Bill, for which the chief executive has not made a decision under section 49 of the Act, will be considered as though this Bill had not commenced.

Therefore the application will be considered even though a fee has not been paid under section 47(2).

This transitional provision maintains the status quo for EISs submitted before the amendment in clause 59 commences.

Section 668 Existing application for registration to carry out chapter 4 activity

New section 668 provides that an application for registration to carry out a chapter 4 activity made under section 73D of the *Environmental Protection Act 1994* before the commencement of clause 61 of this Bill, that has not been decided, must be decided under the unamended Act.

This transitional provision maintains the status quo for applications for registration made before clause 61 commences.

Section 669 Registration to carry out a chapter 4 activity

New section 669 provides that the provisions in section 73G of the unamended *Environmental Protection Act 1994* that apply to when a registration certificate to carry out a chapter 4 activity takes effect continue to apply if:

(a) before the Act was amended, the administering authority issued a registration certificate to a person and, at that time the person did not have a development permit; or

(b) the administering authority issued a registration certificate to a person under the unamended Act, as applied by section 668, and the person does not have a development permit.

This transitional provision maintains the status quo for registration certificates issued before clause 63 commences.

Section 670 Existing non-code compliant application for a level 1 mining project

New section 670 provides that the provisions in sections 224 and 225 of the unamended *Environmental Protection Act 1994* continue to apply to an environmental authority (mining lease) application made before the commencement if—

(a) it is a non code-compliant application for a level 1 mining project; and

(b) the Land Court has, under section 222 of the unamended Act, given a recommendation to the Minister for the *Mineral Resources Act 1989*; and

(c) at the commencement, the Minister for the *Environmental Protection Act 1994* has not decided the application.

This transitional provision maintains the status quo for applications for an environmental authority (mining lease) which had not been decided before clauses 67 and 68 commence.

Section 671 Existing draft transitional environmental programs

This section provides that a draft transitional environment program submitted, but not decided, under section 332 or 333 of the unamended Act must be considered, or continue to be considered under the unamended Act.

This transitional provision maintains the status quo for transitional environmental programs issued before clauses 72 and 73 commence.

Section 672 Transitional environmental programs

This section provides that a transitional environmental program in force at commencement, or approved under the unamended Act as applied by section 671, continues in effect even if it does not comply with the content requirements for a transitional environmental program in section 331 in force after commencement.

This transitional provision maintains the status quo for transitional environmental programs in force before clause 71 commences.

Section 673 Existing application for disclosure exemption

This section provides that an application for a disclosure exemption made under section 564 of the unamended Act that has not been decided at commencement is taken to be withdrawn. The disclosure exemption can be considered under the *Right to Information Act 2009* if an application is made under that Act to release the information. This transitional is consequential to clause 92.

Section 674 Existing reviews and appeals about disclosure exemptions

This section provides that an application for a review, or an appeal, of an 'original decision' relating to an application for an exemption from disclosure of certain information in a document referred to in schedule 2, part 1, division 5 that have not been completed prior to commencement are considered to be withdrawn. The Land Court must stop hearing any such appeal. The disclosure exemption can be considered under the *Right to Information Act 2009* if an application is made under that Act to release the information. This transitional is consequential to clause 92.

Section 675 Existing disclosure exemptions

This section provides that the process for exemptions from disclosure in Chapter 12, part 3 of the unamended Act continues to apply to a disclosure exemption granted prior to commencement. This transitional provision maintains the status quo for disclosure exemptions granted before clause 92 commences.

Clause 94 Amendment of sch 2 (Original decisions)

This clause removes Schedule 2, part 1, division 5 from the *Environmental Protection Act 1994*. The sections cross-referenced in this Division have been omitted as part of amendments that remove Chapter 12, part 3 from the *Environmental Protection Act 1994*, therefore Schedule 2, part 1, division 5 is no longer necessary.

Clause 95 Amendment of sch 4 (Dictionary)

This clause amends the Dictionary in schedule 4 of the *Environmental Protection Act 1994* to remove definitions for 'disclosure exemption', and 'exempted material'.

This clause inserts definitions for the terms 'amending Act', 'commencement', 'development permit', 'environmental standard', 'State Development Minister' and 'unamended Act', used in the Bill.

The existing definition of 'mobile and temporary environmentally relevant activity' has been replaced to clarify that mobile and temporary environmentally relevant activities (ERAs) such as abrasive blasting may be carried out at locations that do not have a building situated on the land, by replacing the word 'premises' with 'location'.

Part 5 Amendment of Marine Parks Act 2004

Clause 96 Act amended

This clause states that this part amends the *Marine Parks Act 2004*.

Clause 97 Amendment of s 62 (Issue of warrant)

This clause amends section 62 of the *Marine Parks Act 2004* to provide that where a Magistrate issues a warrant under this section the warrant must state that any inspector may enter the place and exercise the inspector's powers. Currently this section is limited to the Magistrate issuing a warrant to a stated inspector, usually the inspector who seeks the warrant. Since warrants are often sought in a different place to where they are executed, this limits the effective functioning of the Act, since the person who seeks the warrant must execute the warrant. This amendment allows for flexibility in the execution of the warrant by any inspector and brings these warrant provisions in line with provisions in the *Vegetation Management Act 1999* and the *Water Act 2000*. Note that the warrant must still be executed by an inspector under this Act.

Clause 98 Amendment of s 65 (Warrants—procedure before entry)

This clause amends section 65 of the *Marine Parks Act 2004* to ensure that any authorised officer entering a place under a warrant must follow the procedure in this section before entry. This amendment is consequential to the amendment of section 62 in this Bill.

Clause 99 Insertion of new ss 145A and 145B

This clause inserts new sections 145A and 145B into the *Marine Parks Act 2004*.

Section 145A Chief executive's general powers

New section 145A relates to departmental officers undertaking marine park management activities, for example conducting turtle monitoring, in a marine park. This section makes it clear that the chief executive does not require an authority under the *Marine Parks Act 2004* to enable marine park management activities to be undertaken that support achieving the object of the Act. This section would also apply to persons acting on behalf of the chief executive. This section does not remove the requirement for persons not acting on behalf of the chief executive from obtaining a marine park permit.

Section 145B Entry or use by authorised persons without permission or giving notice

Similar to section 145A, new section 145B relates to authorised officers undertaking marine park management activities in a marine park. This section supports section 145A through confirming that an authorised officer under the *Marine Parks Act 2004* does not require permission and is not required to give notice to the chief executive to undertake day-to-day management activities within the park. For example, this provision provides that turtle research can be conducted by authorised officers under the *Marine Parks Act 2004* without the need to obtain a permission.

Clause 100 Insertion of new s 147A

This clause inserts a new section 147A into the *Marine Parks Act 2004* to provide that an inspector under the *Marine Parks Act 2004* is protected from prosecution when undertaking an action directed by the Minister or chief executive, or when exercising a function under the Act. In addition, a person acting under the direction of the Minister, the chief executive or an inspector is not liable for prosecution.

This does not change the status quo, since actions for carrying out statutory functions do not normally create liability. However, this section provides certainty to staff members and volunteers of the protection that is afforded to their actions. In particular, uncertainty about the position under the *Marine Parks Act 2004* arises because the *Nature Conservation Act 1992* has a provision conferring the immunity while the *Marine Parks Act 2004* does not.

These provisions potentially conflict with the fundamental legislative principle that legislation should not confer immunity from proceeding or prosecution without adequate justification. However, immunity is justified in these circumstances since actions taken in carrying out statutory functions do not normally attract liability. This section expressly provides for that protection to clarify the matter and to assure authorised persons, rangers and volunteer workers that the immunity is in place so they can carry out marine park duties with assurance, particularly if urgent action is required for conservation or safety reasons. The amendment mirrors the existing section 143 in the *Nature Conservation Act 1992* and will provide consistent protection for staff operating across national park and marine park boundaries.

Part 6 Amendment of Nature Conservation Act 1992

Clause 101 Act amended

This clause states that this part amends the *Nature Conservation Act 1992*.

Clause 102 Amendment of s 29 (Dedication of protected areas)

This clause amends section 29 of the *Nature Conservation Act 1992* to remove superfluous wording in relation to dedication of a forest reserve that is subject to a lease under the *Land Act 1994*, as the schedule definition (dictionary) of state land already includes reference to a forest reserve subject to a lease under the *Land Act 1994*.

Clause 103 Amendment of s 148 (Monitoring warrants)

This clause amends section 148(4)(a) of the *Nature Conservation Act 1992* to provide that where a Magistrate issues a warrant under this section the warrant may state that any conservation officer may enter the place and exercise the officer's powers. Currently section 148 is limited to the Magistrate issuing a warrant to a stated conservation officer, usually the conservation officer who seeks the warrant. Since warrants are often sought in a different place to where they are executed, this limits the effective functioning of the Act, since the person who seeks the warrant must execute the warrant. This amendment allows for flexibility in the execution of the warrant by any conservation officer and brings these warrant provisions in line with provisions in the *Vegetation Management Act 1999* and the *Water Act 2000*. Note that the warrant must still be executed by a conservation officer under this Act.

Clause 104 Amendment of s 149 (Offence related warrants)

This clause amends section 149(4)(a) of the *Nature Conservation Act 1992* to ensure that any conservation officer entering a place under a warrant must follow the procedure in this section before entry. This amendment is consequential to the amendment of section 148.

Clause 105 Amendment of s 175 (Regulation-making power)

This clause amends section 175 of the *Nature Conservation Act 1992* to remove any doubt that a regulation may be made regarding the payment of royalties and the recovery of unpaid royalties. The *Nature Conservation (Protected Areas Management) Regulation 2006* already contains a royalty provision in relation to gravel extraction from resource reserves.

Part 7 Amendment of Queensland Heritage Act 1992

Clause 106 Act amended

This clause states that this part amends the *Queensland Heritage Act 1992*.

Clause 107 Amendment of s 34 (Changing entries in register)

This clause amends section 34 of the *Queensland Heritage Act 1992* to enable the chief executive to maintain entries in the Queensland heritage register correctly. The amendment allows for the chief executive to update information in the register to reflect new historical research and physical changes to the Queensland heritage place, and to correct any errors of fact contained in register entries. The amendment also provides for the boundary of a Queensland heritage place, or statement about the cultural heritage significance of a Queensland heritage place, to be varied with the written agreement of the owner.

Clause 108 Amendment of s 36 (Applying to enter place in, or remove place from, register)

This clause amends section 36 of the *Queensland Heritage Act 1992* to provide greater certainty about what information is required to accompany an application to enter place in, or remove place from, the Queensland heritage register.

Clause 109 Amendment of s 44 (Chief executive to give heritage recommendation to council)

This clause amends section 44 of the *Queensland Heritage Act 1992* to provide the chief executive with the option of recommending that a place stay on the Queensland heritage register but the entry be varied. This aligns with the options the Queensland Heritage Council has when making a decision.

Clause 110 Insertion of new pt 4, div 4A

This clause inserts the new part 4, division 4A into the *Queensland Heritage Act 1992* about destroyed place recommendations.

Division 4A Destroyed place recommendations

Section 46A Chief executive may give destroyed place recommendation

In the case of a State heritage place that has been destroyed by natural disaster or by approved development, new section 46A provides for the chief executive to make a recommendation under the *Queensland Heritage Act 1992*, with or without application, that the place be removed from the Queensland heritage register. The place must no longer satisfy any of the cultural heritage criteria, and the owner must have been consulted.

This process enables the chief executive to make a timely recommendation to the Queensland Heritage Council about the destroyed State heritage place, and for the Queensland Heritage Council to maintain the accuracy and integrity of the information in the register.

Clause 111 Amendment of s 47 (Council's role in relation to heritage recommendations)

This clause amends section 47 of the *Queensland Heritage Act 1992* to provide for the consideration of, and a decision about, a destroyed place recommendation. This amendment is consequential to the insertion of new section 56A into the *Queensland Heritage Act 1992*.

Clause 112 Amendment of s 48 (Council may seek further information)

This clause amends section 48 of the *Queensland Heritage Act 1992* to provide for the Queensland Heritage Council to seek further information in relation to a destroyed place recommendation before making a decision.

This amendment is consequential to the insertion of new section 56A into the *Queensland Heritage Act 1992*.

Clause 113 Amendment of s 54 (Notice of council's decision)

This clause amends section 54 of the *Queensland Heritage Act 1992* to provide for a decision, and notice of the day it was made, to be published in the gazette.

Currently public notice is carried out when an application is received for a State heritage place and again at the decision stage. A heritage submission about an application may be made within 20 business days after notice of the application is published. Public notice at the decision stage is onerous and unnecessary as no public submissions are received at this stage. The requirement to give public notice at the decision stage will be replaced by the requirement to publish a notice in the gazette to place the decision on public record.

Clause 114 Insertion of new pt 4, div 5, sdiv 4

This clause inserts the new part 4, division 5, subdivision 4 into the *Queensland Heritage Act 1992*.

Subdivision 4 Decisions on destroyed place recommendations

Section 56A Council to make decision on destroyed place recommendation

New section 56A provides a process for the Queensland Heritage Council to make a decision in relation to a destroyed place recommendation. The process is based on the Queensland Heritage Council's existing decision making process under section 51 of the *Queensland Heritage Act 1992*. The council must make a decision within 60 days after receiving a destroyed place recommendation.

This process enables Queensland Heritage Council to maintain the accuracy and integrity of the information in the register.

Clause 115 Amendment of s 67 (Notice of council's decision)

This clause amends section 67 of the *Queensland Heritage Act 1992* to provide for a decision, and notice of the day it was made, to be published in the gazette.

Currently public notice is carried out when an application is received for an archaeological place and again at the decision stage. An archaeological submission about an application may be made within 20 business days after notice of the application is published. Public notice at the decision stage is onerous and unnecessary as no public submissions are received at this stage. The requirement to give public notice at the decision stage will be replaced by the requirement to publish a notice in the gazette to place the decision on public record.

Clause 116 Amendment of s 87 (Chief executive may give notice about essential maintenance work)

This clause amends section 87 of the *Queensland Heritage Act 1992* to provide for the treatment of termites and other insects under the existing essential maintenance work provisions. In Queensland, much of our heritage building stock is constructed of timber, and termites are a particular problem. Early intervention is the only way to manage termites.

Clause 117 Amendment of s 122 (Changing entries in register)

This clause amends section 122 of the *Queensland Heritage Act 1992* to enable local governments to maintain entries in a local heritage register correctly. The amendment allows for the local governments to update information in the local heritage register to reflect new historical research and physical changes to the local heritage place, and to correct any errors of fact contained in local heritage register entries. The amendment also provides for the boundary of a local heritage place, or statement about the

cultural heritage significance of a local heritage place, to be varied with the written agreement of the owner.

Clause 118 Amendment of s 136 (Issue of warrant)

This clause amends section 136(2)(a) of the *Queensland Heritage Act 1992* to provide that where a Magistrate issues a warrant under this section the warrant may state that any authorised person may enter the place and exercise the authorised person's powers. Currently this section is limited to the Magistrate issuing a warrant to a stated authorised person, usually the authorised person who seeks the warrant. Since warrants are often sought in a different place to where they are executed, this limits the effective functioning of the Act, since the person who seeks the warrant must execute the warrant. This amendment allows for flexibility in the execution of the warrant by any authorised person and brings these warrant provisions in line with provisions in the *Vegetation Management Act 1999* and the *Water Act 2000*. Note that the warrant must still be executed by an authorised person under this Act.

Clause 119 Amendment of s 138 (Warrants—procedure before entry)

This clause amends section 138 of the *Queensland Heritage Act 1992* to ensure that any authorised person entering a place under a warrant must follow the procedure in this section before entry. This amendment is consequential to the amendment of section 136.

Clause 120 Amendment of s 142 (Seizing evidence at a place that may only be entered with consent or warrant)

This clause amends section 142 of the *Queensland Heritage Act 1992* to insert the words 'under a' warrant. This amendment is consequential to the amendment of section 136.

Clause 121 Insertion of new pt 15, div 3

This clause inserts the new part 15, division 3, into the *Queensland Heritage Act 1992.*

Division 3 Transitional provision for Environmental Protection and Other Legislation Amendment Act 2010

Section 195 References to registered place

New section 195 ensures that a reference to a registered place in an Act or document is taken to be a reference to a Queensland heritage place. This will ensure consistency with terminology used in the *Sustainable Planning Act 2009*.

Clause 122 Amendment of schedule (Dictionary)

This clause amends the dictionary of the *Queensland Heritage Act 1992* to provide for a definition of 'destroyed place recommendation', and a definition of 'Queensland heritage place'. This will ensure consistency with terminology used in the *Sustainable Planning Act 2009.*

Part 8 Amendment of Recreation Areas Management Act 2006

Clause 123 Act amended

This clause states that this part amends the *Recreation Areas Management Act 2006*.

Clause 124 Amendment of s 19 (Public notice of draft management plan)

This clause amends section 19(6) of the *Recreation Areas Management Act 2006* and inserts a new subsection (7) to allow the chief executive to charge a person who requests that a draft management plan be posted to them, for the postage as well as for the cost of producing the copy. This provision will facilitate cost recovery.

Clause 125 Amendment of s 26 (Public notice of draft amendment)

This clause amends section 26(5) of the *Recreation Areas Management Act 2006* and inserts a new subsection (6) to allow the chief executive to charge a person who requests that a draft amendment be posted to them, for the reasonable cost of postage as well as for the cost of producing the copy. This provision will facilitate cost recovery.

Clause 126 Amendment of s 32 (Public access to approved management plans)

This clause amends section 32(3) of the *Recreation Areas Management Act 2006* and inserts a new subsection (4) to allow the chief executive to charge a person who requests that an approved management plan be posted to them, for the reasonable cost of postage as well as for the cost of producing the copy. This provision will facilitate cost recovery.

Clause 127 Amendment of s 88 (Term and review of commercial activity agreements)

This clause amends section 88(1) of the *Recreation Areas Management Act 2006* to extend the maximum term of commercial activity agreements from 10 to 15 years. This provision will apply to all new commercial activity agreements. The *Tourism in Protected Areas* policy framework recommended increasing the maximum term to create a more secure investment environment. The amendment recognises the following:

— Longer frames are desirable to build a recognised brand in the market;

— Depreciation on capital investment in assets such as tour buses is generally longer than present permit/agreement periods; and

— Securing capital investment from financial institutions is easier with a longer period than present permit/agreement periods allow.

Additionally, the amendment will enhance coordination of the State government and Great Barrier Reef Marine Park Authority (GBRMPA) joint management of the Great Barrier Reef by ensuring a consistent length of tenure periods for authorities, aligning with current GBRMPA maximum terms of 15 years on tourism permissions.

Clause 128 Amendment of s 111 (Unlawfully conducting commercial activity)

This clause amends section 111 of the *Recreation Areas Management Act 2006* to insert a new exception for conducting a commercial activity, which has been applied uniformly across the protected area legislation. The effect of the exception is that when less than 2 people undertake filming or photography and no structures are used, they will not be required to get a permit or agreement. These types of activities have been assessed as having minimal risks involved, having a minimal impact on the environment and not value adding to the government's business.

Clause 129 Amendment of s 114 (Unauthorised structures and works)

This clause amends section 114 of the *Recreation Areas Management Act 2006* which makes it an offence to construct an unauthorised structure or work. The amendment to this section is made to complement the change made in section 111 regarding prescribed filming or photography activities. Subsection (3) states that it is not an offence to erect a tripod or one person portable hide, which is used for a prescribed filming or photography activity. Subsection (4) defines 'prescribed filming or photography activity'.

Clause 130 Amendment of s 115 (Unlawful lighting of fires)

This clause amends section 115 of the *Recreation Areas Management Act 2006*, to clarify that it is unlawful to keep and use a fire, as well as light it when it is prohibited. This removes a possible loophole where a person may claim that they did not commit the offence of lighting a fire but assumed control of an existing fire. The exemption in s115(4) has also been amended so that the exemption to the offence covers lighting, using and keeping a fire in the circumstances described in the section.

Clause 131 Amendment of s 153 (Issue of warrant)

This clause amends section 153 of the *Recreation Areas Management Act 2006* to provide that where a Magistrate issues a warrant under this section the warrant may state that any authorised officer may enter the place and exercise the officer's powers. Currently this section is limited to the Magistrate issuing a warrant to a stated authorised officer, usually the authorised officer who seeks the warrant. Since warrants are often sought in a different place to where they are executed, this limits the effective functioning of the Act, since the person who seeks the warrant must execute the warrant. This amendment allows for flexibility in the execution of the warrant by any authorised officer and brings these warrant provisions in line with provisions in the *Vegetation Management Act 1999* and the *Water Act 2000*. Note that the warrant must still be executed by an authorised officer under this Act.

Clause 132 Amendment of s 156 (Warrants procedure before entry)

This clause amends section 156 of the *Recreation Areas Management Act 2006* to ensure that any authorised officer entering a place under a warrant must follow the procedure in this section before entry. This amendment is consequential to the amendment to section 153.

Clause 133 Amendment of s 163 (Power to stop persons)

This clause amends section 163 of the *Recreation Areas Management Act 2006* to allow an authorised officer to require a person to stop, and not to move on, when they suspect the person is committing an offence. Previously this section required the officer to find a person committing a crime for them to require a person to stop. This was a problem for two reasons. The first is that for the officer to know beyond doubt that the person was committing an offence, they would have to stop the person and talk with them to find out if the person was relying on one of the many reasonable excuse exemptions. The second reason is that the question of whether someone has committed an offence is one properly decided by a court.

Subsection (1)(b) of this section already permits an authorised officer to require a person to stop if they find the person in circumstances that lead the officer to reasonably suspect the person has committed an offence against this Act, or the authorised officer has information that leads the officer to suspect the person has committed an offence against this Act, so the authorised officer's powers have not been clarified and only minimally expanded by this amendment.

Part 9 Amendment of Torres Strait Islander Cultural Heritage Act 2003

Clause 134 Act amended

This clause states that this part amends the *Torres Strait Islander Cultural Heritage Act 2003*.

Clause 135 Amendment of s 131 (Issue of warrant)

This clause amends section 131 of the *Torres Strait Islander Cultural Heritage Act 2003* to provide that where a Magistrate issues a warrant

under this section the warrant may state that any authorised officer may enter the place and exercise the officer's powers. Currently this section is limited to the Magistrate issuing a warrant to a stated authorised officer, usually the authorised officer who seeks the warrant. Since warrants are often sought in a different place to where they are executed, this limits the effective functioning of the Act, since the person who seeks the warrant must execute the warrant. This amendment allows for flexibility in the execution of the warrant by any authorised officer and brings these warrant provisions in line with provisions in the *Vegetation Management Act 1999* and the *Water Act 2000*. Note that the warrant must still be executed by an authorised officer under this Act.

Clause 136 Amendment of s 133 (Warrants—procedure before entry)

This clause amends section 133 of the *Torres Strait Islander Cultural Heritage Act 2003* to ensure that any authorised officer entering a place under a warrant must follow the procedure in this section before entry. This amendment is consequential to the amendment to section 131 in this Bill.

Clause 137 Amendment of s 138 (Seizing evidence at a place that may only be entered with consent or warrant)

This clause amends section 138 of the *Torres Strait Islander Cultural Heritage Act 2003* to insert the words 'under a' warrant. This amendment is consequential to the amendment of section 131.

Part 10 Amendment of Water Supply (Safety and Reliability) Act 2008

Clause 138 Act amended

This clause states that this part amends the *Water Supply (Safety and Reliability) Act 2008*.

Clause 139 Amendment of s 415 (Issue of warrant)

This clause amends section 415(2)(b) of the *Water Supply (Safety and Reliability) Act 2008* to provide that where a Magistrate issues a warrant under this section the warrant may state that any authorised officer may enter the place and exercise the officer's powers. Currently this section is limited to the Magistrate issuing a warrant to a stated authorised officer, usually the authorised officer who seeks the warrant. Since warrants are often sought in a different place to where they are executed, this limits the effective functioning of the Act, since the person who seeks the warrant must execute the warrant. This amendment allows for flexibility in the execution of the warrant by any authorised officer and brings these warrant provisions in line with provisions in the *Vegetation Management Act 1999* and the *Water Act 2000*. Note that the warrant must still be executed by an authorised officer under this Act.

Clause 140 Amendment of s 418 (Warrants—procedure before entry)

This clause amends section 418 of the *Water Supply (Safety and Reliability) Act 2008* to ensure that any authorised officer entering a place under a warrant must follow the procedure in this section before entry. This amendment is consequential to the amendment to section 415.

Clause 141 Amendment of s 422 (Seizing evidence)

This clause amends section 422 of the *Water Supply (Safety and Reliability) Act 2008* to insert the words 'under a' warrant. This amendment is consequential to the amendment of section 415.

Part 11 Other amendments

Clause 142 Acts amended in schedule

This clause provides that the schedule amends the Acts it mentions.

Schedule Amendment of other Acts

This schedule makes minor or consequential amendments to correct minor errors or update terminology and cross-referencing in the following Acts:

- Environmental Protection Act 1994
- Forestry Act 1959
- Marine Parks Act 2004
- Mineral Resources Act 1989
- Nature Conservation Act 1992
- Queensland Heritage Act 1992
- Sustainable Planning Act 2009
- Transport Infrastructure Act 1994
- Urban Land Development Authority Act 2007