Mineral and Energy Resources (Financial Provisioning) Bill 2017

Explanatory Notes

Short title

The short title of the Bill is the Mineral and Energy Resources (Financial Provisioning) Bill 2017.

Policy objectives and the reasons for them

The objectives of this Bill are:

1. to manage the financial risk to the State if mineral and energy resource tenure holders do not comply with their environmental management and rehabilitation obligations; and
2. to ensure that land disturbed by mining activities is rehabilitated to a safe and stable landform that does not cause environmental harm, and can sustain an approved post-mining land use.

Queensland's resources industry is an important contributor to the economy—both for the revenue and the jobs it generates. However, by its very nature, resource exploration and extraction disturbs and changes the land. Successful rehabilitation of that land is a legal obligation of a holder of an environmental authority for a resource activity (authority) and is critical to the industry's social licence to operate. Despite the existing obligation to rehabilitate, there have been growing concerns about the quantity and quality of rehabilitation undertaken to date. This Bill aims to ensure that going forward, progressive rehabilitation is planned for, clear rehabilitation standards and expectations are set, and rehabilitation performance is tracked and monitored.

A holder of an authority or small scale mining tenure is required to provide financial assurance in order to protect the community in circumstances where the holder does not meet its rehabilitation or environmental management obligations. The amount of financial assurance provided by a holder is based on an assessment of the likely cost for third parties to undertake the rehabilitation of existing and planned areas of disturbance.

Recent cases of resource companies unable to complete their rehabilitation activities have highlighted issues with the financial assurance framework. These issues are significant for the Government and have resulted in a large financial burden for the State.

Community groups and the resources sector have also expressed concerns with the current rehabilitation and financial assurance requirements. These concerns are significant and must be addressed to ensure the long-term sustainability of this important industry. Public accountability, including community engagement and consultation throughout the life of a mine, has therefore been considered a key policy objective of the rehabilitation reforms.

Government commissioned Queensland Treasury Corporation (QTC) to undertake a review of the financial assurance arrangements and identify possible improvements in response to these concerns (the QTC Review Report). QTC provided its report Review of Queensland's Financial Assurance Framework to Government in November 2016 and it was published in

May 2017 in conjunction with the discussion papers Financial Assurance Framework Reform and Better Mine Rehabilitation for Queensland. In September 2017, the Financial Assurance Review - Providing Surety discussion paper was published.

This Bill implements the Government's response following extensive consultation on the proposals set out in the discussion papers and the QTC Review Report.

Achievement of policy objectives

The objectives will be achieved by establishing a financial provisioning scheme for the mineral and energy resources sector and implementing mining rehabilitation reforms.

The financial provisioning scheme will provide the Government with access to funds in circumstances where a holder of an authority does not comply with its obligations under the *Environmental Protection Act 1994* (EP Act) and for other resource related activities such as funding legacy abandoned mines, abandoned operating sites and research into rehabilitation techniques. To be clear, the new financial provisioning scheme does not change the environmental or rehabilitation obligations of tenure holders but is designed to protect the State's financial interest.

The mining rehabilitation reforms will seek to improve the rehabilitation performance of resource companies during the life of a mine and also limit the amount of funds that would be required if the Government determined it desirable to undertake environmental management or rehabilitation works.

The Bill replaces the current financial assurance requirements for resource activities under the EP Act with a financial provisioning scheme, including a Financial Provisioning Fund (scheme fund), surety arrangements and the appointment of scheme manager to manage the scheme. Under the new scheme, financial assurance may be provided by payment of a contribution to the scheme fund or the giving of a surety to the scheme manager.

The financial provisioning scheme incorporates risk management principles to ensure that the contribution or surety required from holders reflects the risk of the Government making a financial outlay to undertake environmental management or rehabilitation works where there has been non-compliance with environmental obligations. In this regard, the Bill includes a risk category allocation process for certain authorities which provides for the allocation of an authority to a risk category of very low, low, moderate or high and determines whether the holder will be required to provide a contribution to the scheme fund or give a surety.

Currently, financial assurance is provided for each environmental authority and may only be applied to that authority. The scheme fund will operate on a pooled approach which avoids the risk of shortfalls that exist under the current system and requires holders to pay only an annual contribution.

Contributions to the scheme fund will vary depending on the risk category to which an authority is allocated. Surety will still be required for certain authorities considered high risk and in other specific circumstances.

The amount of the contribution or surety required will be calculated by reference to the ERC for the activities permitted under an authority. The calculation of estimated rehabilitation

costs remains under the EP Act and will be provided to the scheme manager by the administering authority under that Act. The Bill includes amendments to the EP Act to provide a process for determining the estimated rehabilitation cost (ERC) for an authority.

The risk category allocation process will only apply to authorities where the ERC is greater than a prescribed ERC amount. In the absence of a different amount being prescribed, the prescribed ERC amount is $100,000. This is considered reasonable as the benefits accruing from the risk allocation process need to be balanced against the costs to both business and government of undertaking the process.

To preserve the financial viability of the scheme fund, the scheme manager may require surety for an environmental authority where the holder (and its corporate group) already holds authorities for which a contribution is payable to the scheme fund, and where the total ERC for all those authorities exceeds the fund threshold (currently $450 million) This is necessary to protect the scheme fund in the event of a failure of that holder (or corporate group).

The scheme also provides that the scheme fund may be used for legacy abandoned mines, abandoned operating sites and research into rehabilitation techniques.

The Bill provides for transparency in relation to the financial provisioning scheme by including requirements for both a published annual report by the scheme manager and periodic actuarial reviews. An actuarial investigation of the scheme must be carried out five years after commencement and every subsequent three years.

Establishment of the financial provisioning scheme is a reasonable and appropriate response to the issues raised in the QTC review report and matters raised during consultation. It will provide the State with access to a source of funds in relation to environmental management and rehabilitation related costs, while adopting a risk assessment approach, so that the costs to the holder reflect the potential risk for the government.

The Bill will achieve its second objective of implementation of the mine rehabilitation reforms that reflects world-wide best practice in mining operations and rehabilitation. The key pillar of the framework is the introduction of a requirement for all mines to develop a progressive rehabilitation and closure plan (PCR Plan) as part of their site-specific environmental authority application process.

The Bill outlines the content requirements for a PRC Plan, to cover all stages of mining. For a PRC Plan to enhance progressive rehabilitation rates, it will need to include clear milestones for progressive rehabilitation of mined areas. Regular monitoring, assessment and reporting combined with the enforceable milestones of a PRC Plan and new offence provisions for failing to meet milestones or a PRC Plan condition will facilitate the achievement of the policy objectives.

The requirement to develop a PRC Plan is integrated in the existing environmental authority process, minimising the regulatory burden on government and industry.

Alternative ways of achieving policy objectives

In the QTC Review Report, alternative frameworks for the provision of financial assurance were considered and two key models for financial assurance were identified:

- the individual responsibility model, where operators provide the State with a guarantee for each site, and
- the pooled model, where operators pay an annual contribution into a scheme fund.

With the individual responsibility model, the guarantee is usually provided by a third party (a bank or insurance company) though some jurisdictions accept for example, insurance policies (Nevada and Ontario); trust funds (South Africa); company guarantees (North America) and pledges of assets (Yukon, limited use).

The Review undertook a high-level consideration of these alternative instruments for use in an individual responsibility model and determined:

- the instruments did not meet the desired outcomes set for the review, and
- the instruments themselves are rarely used and/or there is limited availability in the market (acknowledging that in some instances a market develops once a need arises).

The focus for alternative frameworks therefore was on pooled models. In theory, a pool offers the same protection for government at lower cost to industry, provided that:

- participation requirements mitigate the risk of adverse selection and moral hazard;
- contribution rates reflect operator risk; and
- systemic/portfolio risks can be mitigated (that is, the risk of multiple events in one time period is low, and/or the fund is sufficiently large).

A universal fund and a tailored solution were analysed as options for a pooled model the QTC Review Report and the tailored solution model was recommended to be considered for adoption by the Government. The QTC Review Report noted that the tailored option offers the Government some significant benefits:

- a pool of funds that can be applied to fund other initiatives, such as abandoned mines or innovative solutions.
- a socialised fund so that, other than in extreme events, there is a sufficient funds to complete rehabilitation to the required standard.
- a benefit to the majority of industry through a reduction in the cost of business.

The tailored solution model forms the basis for the financial provisioning scheme in the Bill. The model proposed has been modified and optimised in response to consultation.

For the rehabilitation policy, changes to the EP Act are required in order to enforce and support on-ground compliance action and to clearly guide operators in developing their PRC Plans. In relation to the EP Act, there are no other viable alternatives that would achieve the policy objectives other than the amendments in the Bill.

Three options for implementation of PRC Plans were considered internally:

- to give effect to PRC Plans through a provision in the legislation.
- to give effect to PRC Plans as a condition of an authority.
- to give effect to PRC Plans by requiring that the required contents of a PRC Plan be inserted as conditions in the authority.

After a detailed analysis, only the first option was found to be consistent with best practice as well as other elements of the policy reform framework. It was further determined that it would allow for all rehabilitation requirements to sit in a single, strategic mine planning document with enough flexibility for minor amendments and with all compliance tools available. The second and third options would make both the compliance and amendment processes more challenging and in turn would not reflect the intent of the proposed policy reform. Therefore, the first option best meets the policy objectives of the Bill and supports the intended functioning of the PRC Plan. The approach proposed has been modified and optimised in response to consultation.

Estimated cost for government implementation

The Government will incur costs in the development and implementation of the financial provisioning scheme and the rehabilitation framework. These costs are focussed on the development of legislation, guidelines and business processes, and the implementation of technology. One off funding of $39.4 million over 5 years has been provided to support these activities and will be recovered from the scheme. However existing Government employee costs will not be recovered.

The financial provisioning scheme under the Bill seeks to be substantially self-funded. The Bill makes provision for investment of the scheme fund and for the collection of fees from participants in the scheme (for example, assessment and administration fees). The Bill also provides for payments from the scheme for costs related to the administration of the scheme and staff services. The fees payable under the scheme are for cost recovery purposes.

Following the implementation of the scheme, the costs to Government from unrehabilitated mines sites which are disclaimed will be substantially lessened.

Consistency with fundamental legislative principles

The Bill has been drafted with regard to fundamental legislative principles (FLPs) as defined in section 4 of the *Legislative Standards Act 1992* and is generally consistent with these provisions. Clauses of the Bill in which FLP issues arise, together with the justification for any for departure, are outlined below. Other changes which may suggest FLP concerns, but which are not a breach, are discussed in the Notes on provisions section below.

Whether the legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review and consistent with principles of natural justice – Legislative Standards Act sections 4(3)(a) and 4(3)(b)

No external review or appeal

The Bill does not provide for a right of appeal against the risk allocation decisions made by the scheme manager under clauses 27, 32 and 38. This potentially breaches the principle that legislation should only make rights and liberties, or obligations, dependent on administrative power if the power is sufficiently defined and subject to appropriate review.

Under the proposed financial provisioning scheme, the scheme manager is required to make an allocation decision for certain authorities (those with an ERC equal to or more than $100,000).

The nature of the allocation decision is to ensure that the contribution or surety required from a resource company or an individual (the holder) reflects the risk to the State having to make a financial outlay if mineral and energy resource tenure holders do not comply with their environmental management and rehabilitation obligations.

In making an allocation decision, the scheme manager must consider the scheme manager's opinion of the probability of the State incurring costs and expenses because the holder has not prevented or minimised environmental harm, or rehabilitated or restored the environment, in relation to a resource activity carried out under, or to ensure compliance with, the authority.

As noted above, depending on the risk category to which an authority is allocated, a holder of an authority will be required either to pay a contribution to the scheme fund based on a fixed percentage of their ERC or provide surety for the full amount of the ERC.

The scheme manager's allocation is not a decision which is presently made by the administering authority under the EP Act. Under the current EP Act framework a holder is required to provide financial assurance for the full amount of rehabilitation costs (less discounts in some circumstances).

The scheme manager's allocation decision is about managing the State's risk, is expected to be primarily financial in nature and applies only to the holder (or incoming holder) and not to any third party. Also, the decision is reviewed each year and each year the risk category allocation may change.

It is likely that the allocation decision will be informed by highly specialised advice received from an external assessment advisor who, in effect, produces a bespoke risk rating for consideration by the scheme manager. In these circumstances any merits review would, at best, involve a review of the material considered by the scheme manager, rather than a reassessment independent from the scheme manager. However, the ERC decision made by the administering authority, which forms the basis of the calculation of the amount of contribution payable or surety given, is subject to merits review under the EP Act, consistent with the current framework.

However the Bill does afford procedural fairness to holders through a two-stage decision making process. The scheme manager is required to provide the holder with an indicative risk category allocation, including reasons for the proposed risk category allocation. The holder will then have a reasonable period to provide further information or submissions to the scheme manager before a final decision is made.

The scheme manager's allocation decisions will be subject to the *Judicial Review Act 1991* (JR Act), subject to the limitation that only the holder (or incoming holder) will have rights under the JR Act in accordance with clauses 74 and 75. This is reasonable in the circumstances as only those entities are affected by the scheme manager's decision.

However, third parties will have access to information about the scheme as a whole through the scheme manager's published annual report, which must also include information about

actuarial investigations. Any feedback received from the public on the effectiveness of the scheme must also be included in the next year's annual report.

Whether the legislation has sufficient regard to the rights and liberties of individuals – Legislative Standards Act 1992, section 4(3)(a) – whether the offence is considered to be proportionate and relevant to the actions to which the consequences are applied by the legislation

Penalty for Offences

The Bill contains a number of new offences which are appropriate, reasonable and proportionate and relevant to the action to which the penalty is applied; and are comparable to similar current offences in other legislation and do not represent a breach of FLP. In addition, a number of existing offences under the EP Act have been re-inserted by the Bill, either as a result of re-numbering or because the provision is changed to maintain the status quo for an operator not affected by the new PRC Plan requirements or ERC requirements.

Whether the legislation has sufficient regard to the rights and liberties of individuals – *Legislative Standards Act 1992*, section 4(3)(d) does not reverse the onus of proof in criminal proceedings without adequate justification and liability of a holder for the commission of an offence by another person

Reverse onus of proof

The insertion of section 431C is essentially a re-insertion the existing section 431 of the EP Act (Environmental authority holder responsible for ensuring conditions complied with) to be applied to PRC Plans. The new section 431C mirrors the existing section 431 by requiring the holder of a PRCP schedule to ensure that everyone acting under the schedule complies with its conditions. If a person acting under the schedule commits an offence under section 431C (i.e. a contravention of a condition of the schedule), the holder of the PRCP schedule is guilty of an offence, unless it can be shown that they took all reasonable steps to ensure compliance with the conditions, were not aware of the contravention and could not by the exercise of reasonable diligence have prevented the contravention. This section ensures that all persons who hold a PRCP schedule can be held responsible for a breach of the conditions of the schedule unless they took reasonable steps (as described in subsection (4)) to ensure that the conditions were complied with.

While reproduction of this section raises whether the legislation has sufficient regards to the rights and liberties of individuals, the provision is justified because the matters to be proven for the defence are within the particular knowledge of the PRCP schedule holder. This provides for administrative efficiency in the process.

Whether the legislation has sufficient regard to the rights and liberties of individuals – *Legislative Standards Act 1992*, section 4(3)(e) - confers power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer

Power of entry

The amendment of section 452 of the EP Act (Entry of place—general) provides that an authorised person can enter a place if it is a place to which a PRCP schedule relates. This provision raises the fundamental legislative principle of the limited power to enter premises. However, given that this provision already applies to authorities, the amendment only ensures that it may be used for requirements that have been moved, or are now in a PRCP schedule. This is justified as it is consistent with the existing power to enter a place to which an authority relates, only in limited circumstances after meeting strict pre-requisites.

Whether the legislation does not adversely affect rights and liberties, or impose obligations, retrospectively – *Legislative Standards Act 1992*, section 4(3)(g)

No retrospective provisions

The new rehabilitation provisions in the Bill will not be retrospective. The new requirement to have an approved PRC Plan for mines that have gone through or will go through a site specific application will apply to both new mines and to current mines.

For existing mines, holders of an authority will be required to submit their PRC Plan upon receiving a notice. In preparing their PRC Plan, the holder will be asked to translate their authority rehabilitation conditions into milestones and milestone criteria. For example, if the proponent's authority sets out a proposed post mining land use and completion criteria for that land use, there will be no change to that commitment. The proponent will be required to re-format those commitments into the PRCP schedule which may include developing milestones to achieve that post mining land use.

This also applies to non-use management areas. For example, if the authority approves a non-use management area the proponent will be required to re-format that approval into the PRCP schedule and include milestones to ensure that area is designed and managed to allow for closure and residual risk calculation. For authorities that do not have commitments regarding rehabilitation or post mining land use, the process of developing a proposed PRC Plan will allow operators to design their post mining land uses based on which stage the mining operation is in. However there are criteria that allow the administering authority to take into account the current status and design of the mine rehabilitation in making its decision on the acceptability of the proposed PRC Plan. Guidance material will be developed to support authority holders to develop their proposed PRC Plans and enable the administering authority to assess the application.

Whether the legislation has sufficient regard to the rights and liberties of individuals – *Legislative Standards Act 1992*, section 4(3)(h) – whether the legislation should confer immunity from proceeding or prosecution without adequate justification

Immunity

The Bill does confer immunity from a proceeding but with adequate justification. Clause 85 protects identified protected persons. In this instance, protection from liability is only provided to persons performing functions under the Bill. The immunity is limited in scope and liability for the consequences of acts done, or omissions made, are not extinguished under the Bill but instead attaches to the State, and legal redress remains open. On this basis, the protection from liability, is considered justified and not a breach of a FLP.

Whether the legislation has sufficient regard to the institution of Parliament – *Legislative Standards Act 1992*, section 4(4)(c) – authorises the amendment of an Act only by another Act

Transitional Regulation-Making Power

Clauses 88 and 202 (proposed section 764) of the Bill provide for a transitional regulation-making power that enables the making of a regulation that is necessary to enable or facilitate the transition:

- from the financial assurance framework for resource activities under the EP Act to the proposed financial provisioning scheme under the Bill; and
- from the rehabilitation and financial assurance framework under the pre-amended EP Act to the proposed rehabilitation framework and ERC decision process under the Bill.

Transitional regulation-making powers of this kind may raise an issue as to whether the Bill has sufficient regard to the institution of Parliament. The inclusion of these clauses is justified because they provide a temporary measure to facilitate a smooth transition to the new frameworks under the Bill. The regulation must be declared as a transitional regulation and it may have retrospective operation for the period. The potential contravention of a FLP is mitigated in that a two year sunset clause applies to any transitional regulations and is not considered to be a breach of a FLP. This transitional regulation-making power is similar to provisions in a number of Acts across the Queensland statute book.

Consultation

The Queensland government released the Financial Assurance Framework Reform and the Better Mine Rehabilitation for Queensland discussion papers in May 2017 for public consultation. The government also released the QTC Review Report at the same time to inform stakeholder input on the discussion papers.

The discussion papers were developed in response to the QTC Review Report, industry concerns about the cost of the current financial assurance system and community concerns about rehabilitation and the legacy issues of abandoned mines. The rehabilitation paper presented a proposed mine rehabilitation policy and six delivery elements that together form

an integrated mined land management framework. A lack of rehabilitation increases the risk of financial impacts to the State and the community and the risk of environmental harm.

Over the consultation period the Financial Assurance Project Management Office (PMO) held over 30 external stakeholder consultation meetings. Attendees at stakeholder meetings included industry, environmental groups, local government and university representatives. Industry stakeholders including Queensland Resources Council (QRC), Australian Petroleum Production & Exploration Association (APPEA), Association of Mining and Exploration Companies (AMEC) and individual resource companies were also engaged by the PMO in one-on-one meetings.

In response to the consultation documents and meetings, 477 submissions were received on the Financial Assurance Framework Reform discussion paper and 521 submissions were received on the Better Mine Rehabilitation for Queensland discussion paper. An additional 16 external stakeholder consultation meetings were held in Brisbane, Mackay, Cairns, Emerald, Townsville and Rockhampton on the rehabilitation policy with attendees from industry, environmental groups, local government and university representatives.

The majority of stakeholders have generally supported the objectives of the reform package and have accepted the case for reform. In relation to the financial assurance framework reforms proposed a number of submissions raised concerns with elements of the 'tailored solution'. The key concerns with the tailored solution from industry were the financial impacts, how the Government would assess joint ventures and other complex corporate structures and a request for a right to opt out where the provision of a surety would be less expensive than a pool contribution. The main concern from community stakeholders was that the value of funds allocated to the abandoned mine program was insufficient. The financial provisioning scheme provided for in the Bill strikes a balance between the financial considerations of industry, the interests of community groups and the financial risk to the State.

In relation to the Better Mine Rehabilitation for Queensland discussion paper, all stakeholders have generally supported the rehabilitation policy as proposed. Most stakeholders support the introduction of the requirement for a site-specific mine to have a life-of-mine plan and agree that mined land should be progressively rehabilitated throughout the life of the mine. The key concerns with the proposed policy largely centred on a desire for flexibility, a need for greater detail regarding how the policy will be implemented, what the transitional arrangements will be and ensuring definitions are clear and unambiguous. All of these concerns can be accommodated in the effective implementation of the policy and plan.

A key theme raised by multiple submitters was the need for clear definitions for terms used within the policy including: limited circumstances; special management areas, land 'available' for rehabilitation, rehabilitation/rehabilitated, progressive rehabilitation, large mines, high risk mines, care and maintenance, and stakeholder consultation.

The Government has published consultation reports on the discussion papers and these are available to the public on the Queensland Treasury website.

Following the formal submission period, the Government established a Resource Industry Advisory Committee. The committee includes members from the resource and energy sector representative bodies including the QRC, AMEC and APPEA as well as companies

representative of the sector. The committee has an ongoing role in representing the industry sector in the development and implementation of the reforms.

The Government has also continued consultation with non-governmental conservation organisations including the Environmental Defenders Office, the Lock the Gate organisation, and the World Wildlife Fund.

The Government released a further discussion paper, Financial Assurance Review - Providing Surety (Surety Discussion Paper) in September 2017. The Surety Discussion Paper presented a more flexible approach to providing sureties where one is required under the financial provisioning scheme.

The Government has made a number of changes to the framework set out in the Bill compared to the proposals consulted on in the discussion paper in response to the submissions received during consultation. The changes have included the removal of the selected partner arrangement category from the design of the financial provisioning scheme, an increase in the prescribed ERC threshold, clarification of scheme transparency and reporting arrangements, managing the confidentiality of commercially sensitive documents and changing terminology in the rehabilitation framework.

The Government consulted on the drafting of provisions to be included in the Bill with representatives identified by the peak industry and conservation bodies. Comments on the draft consultation Bill has been considered in the final preparation of the Bill.

Consistency with legislation of other jurisdictions

The Bill is specific to Queensland and is not uniform with, or complementary to, legislation of the Commonwealth or another State. However, the requirement for rehabilitation and the provision of financial assurance in other jurisdictions was considered.

The QTC Review Report considered the financial assurance arrangements in other jurisdictions and included a summary of the financial assurance schemes in Queensland, Western Australia and New South Wales. No other jurisdiction has proposed a scheme that includes the risk based approached that is proposed in this Bill.

The Department of Environment and Heritage Protection consulted with other jurisdictions in the development of the integrated mined land management framework. The Better Mine Rehabilitation for Queensland discussion paper released for consultation in May 2017 included a jurisdictional analysis summary in Appendix 3 that considered the framework used in other Australian and international jurisdictions. Queensland is the only Australian jurisdiction that manages mine rehabilitation under environmental legislation. However, the introduction of new legislation in Queensland will align with the majority of other jurisdictions (New South Wales, Western Australia, Victoria, Tasmania, South Australia and the Northern Territory) which have existing legislative safeguards requiring mining companies to have a life-of-mine planning document that is approved by the regulator.

Notes on provisions

Part 1 Preliminary

Division 1 Introduction

Short Title

Clause 1 states that when enacted, the Bill will be cited as the *Mineral and Energy Resources (Financial Provisioning) Act* 2017.

Commencement

Clause 2 provides for the Bill to commence on a day fixed by proclamation.

Division 2 Purposes and application of Act

Main purposes

Clause 3 sets out the main purposes of this Act.

The main purposes are to:

- provide for holders of environmental authorities to pay a contribution to the scheme fund or give a surety for the authorities; and
- provide a way to manage the risk to the State of incurring costs and expenses if the holder of an authority or small scale mining tenure does not comply with the holder's obligations under the authority or tenure; and
- provide a source of funds to the State if the State does incur costs and expenses mentioned in paragraph (b); and
- provide a source of funds to the State for rehabilitation activities at land on which an abandoned mine exists; remediation activities in relation to an abandoned operating plant and scientific research that may contribute to the rehabilitation of land on which resource activities have been carried out.

How main purposes to be achieved

Clause 4 provides for the main purposes of the Act to be achieved by establishing a financial provisioning scheme to deal with the environmental impacts of resource activities which includes a scheme fund and cash surety account and provides for the appointment of a person to manage the scheme (scheme manager) including making payments from the scheme fund and cash surety account, entering into surety arrangements and calling on and releasing sureties.

Relationship with Environment Protection Act 1994

Clause 5 provides that, except where expressly provided, the Act does not affect the operation of the EP Act. In particular clause 5(2) makes it clear that the Act does not exclude,

limit or otherwise affect the duties, obligations, requirements or restrictions imposed under the EP Act on the holder of an authority or small scale mining tenure.

Act does not affect other rights or remedies

Clause 6 provides that no common law actions are limited by the application of the Act and ensures that any breach of an obligation under the Act does not give rise to an action for breach of statutory duty or another civil right or remedy. Further, to remove any doubt, clause 6(4) declares that nothing in this Act creates an obligation on the State to take action or incur costs and expenses to prevent or minimise environmental harm or rehabilitate or restore the environment in relation to the carrying out of an activity under an authority or small scale mining tenure or secure compliance with an authority or small scale mining tenure.

Division 3 Interpretation

Subdivision 1 Dictionary

Definitions

Clause 7 provides that the dictionary in schedule 1 defines particular words used in this Act.

Subdivision 2 Key Definitions

What is the estimated rehabilitation cost

Clause 8 defines the ERC for an environmental authority for a resource authority (authority) is the amount of the estimated cost of rehabilitating the land on which the resource activity is carried out as decided under section 300 of the EP Act by the administering authority.

The ERC is a key element for the operation of the financial provisioning scheme. The first determination of an ERC for an authority (where it is equal to or more that the prescribed ERC amount as defined in schedule 1), will trigger the scheme manager making the initial risk category allocation for an authority under part 3 of the Act. Further, the ERC is used for working out the amount of contribution to be paid or surety to be given to the scheme manager for all authorities under the scheme.

What is an entity's total estimated rehabilitation cost

Clause 9 defines an entity's total ERC as the sum of the amount of the ERC for each authority for which a contribution to the scheme fund is payable and for which the entity is the holder or, where there is more than 1 holder, the relevant holder (as defined in schedule 1). In cases where there is more than 1 holder for an authority the scheme manager is required to assign an authority to one of the holders (the relevant holder) as part of the initial, changed holder review or annual review decision. The scheme manager may make a guideline under clause 70 about the assigning of authorities to a relevant holder. For clarity, even if an ERC for an authority is assigned to one of the holders as the relevant holder, this does not affect the obligations of each of holder of an authority to pay a contribution to the scheme fund or give a surety.

What is the State's total estimated rehabilitation cost

Clause 10 defines the State's total ERC as the sum of the ERC for every authority granted by the State. The State's total ERC is relevant to the amount of the fund threshold that may be prescribed under clause 11.

What is the fund threshold

Clause 11 defines the fund threshold to be an amount prescribed by regulation or, if no amount prescribed by regulation, $450 million. The fund threshold operates to preserve the financial viability of the scheme fund. For example, the scheme manager may require a surety for an authority where the holder or relevant holder (and its corporate group) already hold authorities for which a contribution to the scheme fund is payable, and where the total ERC for all of those authorities is likely to exceed the fund threshold. This is necessary to protect the scheme fund in the event of a failure of that holder or relevant holder (or its corporate group).

Clause 11(2) sets out the matters to which the Minister must have regard before recommending to Governor in Council to prescribe by regulation another amount as the fund threshold.

The setting of a new fund threshold by regulation may raise a potential FLP issue in that it may authorise the amendment of an Act by means other than an Act. Dealing with changes in the fund threshold by a regulation can be justified on the basis that changes in the total estimated cost of rehabilitation State-wide will fluctuate over time (increase as new areas of disturbance are established and decreased as areas of disturbance are reduced by rehabilitation activities) with the consequence that the financial viability of the scheme fund will also vary over time. The ability to set the threshold by regulation is considered to be the most efficient and effective way of ensuring the fund threshold is set at the sustainable level and therefore justified and not a breach of a FLP.

Part 2 Establishment of scheme

Division 1 scheme manager

Appointment

Clause 12 provides for the appointment by the Governor in Council of a scheme manager under this Act.

Term of appointment

Clause 13 provides for the term of appointment of the scheme manager.

Remuneration and conditions

Clause 14 provides that the remuneration and other allowances to be paid to the scheme manager are decided by Governor in Council.

Resignation

Clause 15 permits the scheme manager to resign at any time by signed notice given to the Minister.

Acting scheme manager

Clause 16 sets out the circumstances and the process for the appointment of an acting scheme manager by the Minister.

Preservation of rights

Clause 17 provides for the preservation of a person's rights accrued as a public service officer if they are appointed the scheme manager.

Relationship with State

Clause 18 provides that the scheme manager represents the State and consequently has the status, privileges and immunities of the State.

Finance

Clause 19 provides that the scheme manager is a part of the department for the purposes of the *Financial Accountability Act 2009* (FAA). In addition, despite section 76 of the FAA, the accountable officer for the department under the FAA may delegate the officer's functions under the FAA to the scheme manager. This will assist the scheme manager in managing and administering the accounts for the scheme fund and cash surety account.

Not statutory body for particular Acts

Clause 20 provides that the scheme manager is not a statutory body for the *Statutory Bodies Financial Arrangements Act 1982* or the FAA.

Functions

Clause 21 sets out the functions of the scheme manager, which includes managing the investment of the scheme fund.

Powers

Clause 22 provides that the scheme manager has all the powers of an individual as well as the powers given to it under this Act or another Act. However, the scheme manager does not have the power to borrow money.

Staff services from department

Clause 23 provides that the chief executive may assign public service employees of the department to perform work for the scheme manager and that those staff are not subject to the direction of the chief executive.

Division 2 Scheme fund and cash surety account

Establishment of scheme fund

Clause 24 establishes a fund called the Financial Provisioning Fund (scheme fund) and sets out how the accounts for the scheme fund are to be kept and how amounts for the scheme fund must be deposited. Subclause (4) requires the chief executive of the department in which the EP Act is administered to pay into the scheme fund amounts recovered under that Act in relation to costs and expenses the chief executive received out of the scheme fund from the scheme manager under clause 65 of the Act. Subclauses (5) and (6) allows for the Treasurer to advance amounts paid out of the consolidated fund to the scheme fund. Subclause (7) sets out amounts received for the scheme fund and subclause (8) makes it clear these amounts are controlled receipts for the FAA and therefore not part of consolidated revenue. Subclause (9) provides that money made be paid out of the scheme fund for the purposes of the Act including for example administration costs of the scheme and the repayment of any advance by the Treasurer.

Cash surety account

Clause 25 requires the scheme manager to keep a cash surety account and how the cash surety account is managed. Cash surety will be kept separate from the scheme fund and is to be attributed to an authority for which the surety is provided. Subclause (4)(b) permits interest on the cash surety account to be paid into the scheme fund. Subclauses (5) and (6) allow the scheme manager to invest an amount in the cash surety account in deposits with a financial institution or investment arrangements mentioned in section 44(1)(d) of the *Statutory Bodies Financial Arrangements Act 1982* at call or for a fixed time on not more than 1 year.

Part 3 Operation of scheme

Division 1 Risk Category Allocation

Subdivision 1 Initial allocation

Application of subdivision

Clause 26 is the application provision for the initial allocation decision. It will apply if the administering authority decides the ERC for an authority under section 300 of the EP Act and the ERC is equal to or more than the prescribed ERC amount. There is no initial allocation decision for an authority with an ERC less than the prescribed ERC amount. In that case, the holder is required to give surety equal to the amount of ERC for an authority.

Subclause (2) makes it clear that this subdivision applies only to the first ERC decision made by the administering authority for an authority with an ERC equal to or more than the prescribed amount. This first ERC decision for an authority is the entry point into risk category allocation process. Later ERC decisions for an authority will be relevant for other allocation decisions for calculating the amount of contribution to be paid, or surety to be given to the scheme manager.

Scheme manager must make initial risk category allocation

Clause 27 requires the scheme manager to allocate an authority to one of four risk categories – very low, low, moderate or high. In deciding the initial risk category allocation the scheme manager must consider (a) the scheme manager's opinion of the probability of the State incurring costs and expenses because the holder has not prevented or minimised environmental harm, or rehabilitated or restored the environment, in relation to an activity carried out under, or to ensure compliance with, an authority; and (b) any submissions made by the holder under clause 28 and (c) relevant the scheme manager guidelines. In forming the scheme manager's opinion, the scheme manager must consider (a) the financial soundness of the holder and any parent corporation of the holder and (b) relevant scheme manager guidelines. The scheme manager may consider (a) the characteristics of any resource project to which an authority relates and (b) any other matter the scheme manager considers relevant to the decision.

Clause 27(4)(a) states the scheme manager may, if there is more than 1 holder of an authority, consider the financial soundness of any or all of the holders and a parent corporation of any or all the holders. This is consistent with the extent of liability under the EP Act.

Clause 27(4)(b) requires the scheme manager, if there is more than 1 holder of an authority, to assign an authority to only 1 of the holders for making the decision under clause 53(c)(ii) (relevant holder). This is relevant for the purpose of calculating an entity's total ERC and the scheme manager's discretion to require a surety in order to preserve the financial viability of the scheme fund.

The scheme manager may make a guideline under clause 70 about the making of allocation decisions and the assigning of authorities to a relevant holder.

Scheme manager must notify holder of indicative risk category allocation

Clause 28 provides that the scheme manger must make an indicative risk category allocation before deciding to allocate an authority to a risk category and give a notice to the holder with the details as set out in this clause. This includes giving the holder the right to make submissions about matters included in the notice or alternatively the holder may give the scheme manager a notice accepting the indicative risk category allocation. The scheme manager has the power to extend the period in which the holder can make submissions.

When indicative risk category allocation becomes initial risk category allocation

Clause 29 provides that the scheme manager must decide to allocate an authority to the risk category stated in the indicative risk category allocation if the holder accepts the indicative risk category allocation or the holder does not make submissions to the scheme manager under clause 28 within the specified time period or extended time period. If the holder makes submissions within the specified time period or extended time period, the scheme manager must decide the initial risk category allocation in accordance with clause 27.

Period for making initial risk category allocation

Clause 30 provides the time periods within which the scheme manager must decide the initial risk category allocation.

Notice of initial rick category allocation

Clause 31 provides that, after deciding the initial risk category allocation, the scheme manager must, as soon as practicable, provide a notice to the holder stating the required details.

Subdivision 2 Changed holder review allocation

Scheme manager may review risk category allocation if changed holder

Clause 32 applies if an authority is allocated to a risk category, the ERC for an authority is equal to or more than the prescribed ERC amount and either of the following happens:

- there is an application under section 19 of the *Mineral and Energy Resources (Common Provisions) Act 2014* for approval to register a prescribed dealing for an assessable transfer and a limited category of non-assessable transfers (within the meaning of that Act); or
- there is a change in an entity that control's the holder within the meaning of section 50AA or a change in a parent corporation of the holder as defined in accordance with section 46 of the *Corporations Act 2001* (Cwth).

In these circumstances, the scheme manager may review the risk category allocation of an authority and decide to confirm or change the risk category and or the relevant holder (changed holder review allocation).

The considerations for the changed holder review allocation reflect the requirements for the initial risk category allocation decision under clause 27. The scheme manager may make a guideline under clause 70 about the making of allocation decisions and the assigning of authorities to a relevant holder.

This changed holder review allocation by the scheme manager is not a mandatory requirement under the Act. The intent of this provision is to not require all changes in holder or control under the *Mineral and Energy Resources (Common Provisions) Act 2014* to be assessed, on the basis that some changes will not necessarily affect the risk category allocation. For example, if joint venture parties apply to register a prescribed dealing that results in a minor change to the holdings between each joint venture party, the scheme manager has the discretion to not review the risk category to which an authority is allocated.

Application to scheme manager if proposed changed holder

Clause 33 allows an entity to apply to the scheme manager for a changed holder review allocation in the same circumstances as apply under clause 32.

This provides a way for the holder or an incoming holder of a resource authority what will be required as an outcome of the scheme manager's risk category allocation decision once the change occurs.

Scheme manager must notify interested entity of indicative changed holder review allocation

Clause 34 requires the scheme manager give a notice of indicative decision before making the changed holder review allocation. The notice must state:

- the risk category the indicative changed holder review allocation and the reasons for the allocation;
- the relevant holder of the authority, and any reasons for assigning the authority to a different relevant holder; and
- the amount of contribution or surety required under the changed holder review allocation.

Clause 34(1)(e) allows the interested entity to make submissions within 20 business days about any matter set out in the notice, or alternatively, accept the changed holder review allocation. The scheme manager may extend the time period within which submissions can be made.

When indicative changed holder allocation becomes the changed holder review allocation

Clause 35 requires the scheme manager to allocate an authority in accordance with the indicative changed holder allocation if the scheme manager does not receive submissions or the indicative changed holder allocation is accepted.

Notice of changed holder review allocation

Clause 36 provides that once a changed holder review allocation decision has been made, the scheme manager must, as soon as practicable, provide a notice to the interested entity stating the required details.

When changed holder review decision takes effect

Clause 37 sets out when the changed holder review decision takes effect.

A changed holder review allocation for a prescribed dealing subject to approval and registration under *Mineral and Energy Resources (Common Provisions) Act 2014* will not take effect until the prescribed dealing is approved. In circumstances where an application is made for a changed holder review allocation under clause 33, the decision will only take effect if the proposed change occurs within 6 months (or such other time as prescribed by regulation) of the decision.

Subdivision 3 Annual review

Annual review of risk category allocation

Clause 38 provides for an annual review of a risk category allocation within 30 business days before the anniversary date of an authority provided that the ERC amount for an authority remains equal to or more than the prescribed ERC amount.

In deciding the annual review allocation, the scheme manager must decide to confirm or change the risk category and the relevant holder.

The considerations for the annual review allocation reflect the requirements for the initial risk category allocation decision under clause 27. The scheme manager may make a guideline under clause 70 about the making of allocation decisions and the assigning of authorities to a relevant holder.

Scheme manager must notify holder of indicative annual review allocation

Clause 39 requires the scheme manger to make an indicative annual review allocation before deciding to allocate an authority to a risk category and give a notice to the holder with the details as set out in this clause. This includes giving the holder the right to make submissions about matters included in the notice or alternatively the holder can give the scheme manager a notice accepting the indicative annual review allocation.

The scheme manager has the power to extend the period in which the holder can make submissions.

When indicative annual review allocation becomes the annual review allocation

Clause 40 provides that the scheme manager must decide to allocate an authority to the risk category listed in the indicative risk category allocation if the holder accepts the indicative risk category allocation or the holder does not make submissions to the scheme manager under clause 39 within the specified time period or extended time period. If the holder makes submissions within the specified time period or extended time period, the scheme manager must decide to allocate an authority to a risk category allocation in accordance with clause 38.

Notice of annual review allocation

Clause 41 provides that once an initial allocation decision has been made, the scheme manager must, as soon as practicable, provide a notice to the holder stating the required details.

Subdivision 4 Information Disclosure

Holder must give scheme manager notice if changed holder

Clause 42 requires the holder of an authority to notify the scheme manager within 10 business days in either of the events mentioned in clause 32. This will enable the scheme manager to consider whether a changed holder review allocation should occur.

This is an offence provision with a maximum penalty of 100 penalty units. This provision is justified as it is proportionate and comparable with other similar provisions across the Queensland statute book.

Holder must give scheme manager notice if cessation in production

Clause 43 requires the holder of an authority relating to the stated tenures in clause 43(1) to give notice to the scheme manager of the matters outlined in clause 43(2). A holder of an authority must provide information to the scheme manager when production has ceased and the holder does not expect production to restart within the following 6 months or production has not been carried out under the resource authority for six months. This obligation will arise in circumstances when a resource project in relation to an authority goes into a state which is commonly termed in the resource industry as 'care and maintenance'.

This is an offence provision with a maximum penalty of 100 penalty units. This provision is justified as it is proportionate and comparable with other similar provisions across the Queensland statute book.

Scheme manager may require further information from the holder about risk category allocation

Clause 44 allows the scheme manager to require the holder of an authority to provide further information or a document the scheme manager reasonably requires in making an allocation decision.

Clause 44(2) gives the scheme manager the power to require information at any time after the holder of an authority has applied for an ERC decision under section 298 of the EP Act. This is to allow the scheme manager to gather information in preparation for the initial category allocation assessment under clause 27 pending the ERC decision being made by the administering authority.

This is an offence provision with a maximum penalty of 100 penalty units. This provision is justified as it is proportionate and comparable with other similar provisions across the Queensland statute book.

Scheme manager may require further information from interested entity before changed holder review allocation

Clause 45 provides that the scheme manager may require the interested entity give the scheme manager information or a document for the scheme manager to make a changed holder allocation.

This is an offence provision with a maximum penalty of 100 penalty units. This provision is justified as it is proportionate and comparable with other similar provisions across the Queensland statute book.

Division 2 Liability under scheme

Subdivision 1 Contribution to the scheme fund

Application of subdivision

Clause 46 sets out the application of the subdivision requiring contribution to the scheme fund.

Subject to an exception relating to protecting the financial viability of the scheme fund, an allocation by the scheme manager of an authority to the very low, low or moderate risk category will require the holder to pay a contribution to the scheme fund.

Under clause 53(c)(ii) the scheme manager may require a surety for an authority allocated to the risk category of very low, low or moderate where the scheme manager requires surety to preserve the financial viability of the scheme fund. For example, the scheme manager may require a surety for an authority where the holder or relevant holder (and its corporate group) already hold authorities for which a contribution to the scheme fund is payable, and where the total ERC for all of those authorities is likely to exceed the fund threshold. This is necessary to protect the scheme fund in the event of a failure of that holder or relevant holder (or its corporate group).

This subdivision also applies if under clause 46(b) the scheme manager decides to allow the holder of an authority to pay a contribution despite the authority being allocated to the high risk category after an annual review.

This discretion may be exercised by the scheme manager if (a) prior to an authority being allocated to high risk category, the authority was previously allocated to very low, low or medium risk category for each of the 4 years immediately preceding the decision and (b) before making the allocation, the scheme manager is reasonably satisfied that the holder is not able to obtain a surety. In these circumstances, under clause 48, an authority will be taken to be allocated to the risk category of moderate for working out the contribution payable for the authority.

Holder must pay contribution to scheme fund

Clause 47 provides, subject to clause 49, how a contribution is calculated and when the holder of an authority must pay the contribution.

Clause 47(1) requires the holder of an authority to pay a contribution 30 business days after the scheme manager makes an allocation decision (initial, changed holder review or annual review decision). This will be stated in the decision notices under clauses 31 (notice of initial risk category allocation), 36 (notice of changed holder review allocation) and 41 (notice of annual review allocation).

Clause 47(2) provides the formula for working out the amount of contribution payable. The contribution rate is worked out by multiplying an authority's ERC at the beginning of that day by the rate of contribution (as prescribed by regulation) for the relevant category that an authority has been allocated. The reason for the reference "at the beginning of the day" to the ERC is because there may be circumstances where an ERC for an authority is recalculated and the administering authority makes a new ERC decision throughout the year. The intent of clause 47(2) is that the contribution will be based on the ERC decision current at the beginning of the decision day.

Rate of contribution if holder not able to give surety

Clause 48 provides that, where the scheme manager is satisfied under clause 46(b) that a holder is not able to give a surety (although the holder's authority has been allocated to the high risk category), the amount of contribution payable by the holder instead will be based on an authority being taken to be allocated to the moderate risk category and calculated according to the moderate rate.

Holder must pay contribution and give surety if estimated rehabilitation cost more than fund threshold

Clause 49 applies where the ERC for an authority is more than the fund threshold. As noted above, the fund threshold is determined to preserve the financial viability of the fund. Consistent with that approach, the holder of a single authority for which the ERC is more than the fund threshold, may be required to:

- pay a contribution to the scheme fund calculated as the amount of the fund threshold; and
- give surety for the amount of the ERC that exceeds the fund threshold.

Refund of contribution to previous holder

Clause 50 provides for the scheme manager to refund a pro rata amount of a contribution paid by a holder of an authority where, within 12 months an authority is transferred to another entity and a contribution is paid, or a surety given to the scheme manager, as a result of a changed holder review decision.

Recovery of unpaid contribution

Clause 51 provides that contributions are debts payable to the State.

Notification of administering authority

Clause 52 requires the scheme manager to give notice, as soon as practicable, to the administering authority that the holder of an authority has paid the contribution. The intent of this provision is to ensure the administering authority is aware that the holder has paid the contribution. This is required because section 297 of the EP Act states a holder must not carry out, or allow the carrying out of, a resource activity under an authority unless the holder has paid the contribution.

Subdivision 2 Surety

Application of subdivision

Clause 53 sets out when the holder of an authority is to give a surety to the scheme manager. Surety will be required for:

- an authority allocated to the risk category of high (subject to the scheme manager's discretion to require a contribution under clause 46(b));
- an authority allocated to the risk category of very low, low or moderate where the ERC amount is more than the fund threshold;
- an authority allocated to the risk category of very low, low or moderate where the scheme manager requires surety to preserve the financial viability of the scheme fund (clause 53(c)(ii));
- an authority with an ERC amount below the prescribed ERC amount; and
- a small scale mining tenure (see section 21A(2) of the EP Act).

The scheme manager may make a guideline under clause 70 about the making of decisions under clause 53(c)(ii).

The scheme manager's discretion to require surety to preserve the viability of the fund

Clause 54 provides that in making a decision to require surety under clause 53(c)(ii), the scheme manager may aggregate the total ERC (see clause 9) of all of the following:

- the holder or, if there is more than one, the relevant holder;
- a parent corporation of the holder or relevant holder;
- other subsidiaries a parent corporation of the holder or relevant holder; and
- other corporations controlled (under section 50AA of the *Corporations Act 2001* (Cwth)) by parent corporation of the holder or relevant holder.

Consideration of the total ERC of all of these entities may be necessary in order to protect the financial viability of the scheme fund from over exposure to one particular entity or a group of related entities.

However, clause 54 does not limit the scheme manager's discretion under clause 53(c)(ii) to require surety in order to preserve the financial viability of the scheme fund. There may be other circumstances where the scheme manager considers it necessary to maintain the financial viability of the scheme fund by requiring surety.

Holder must give surety

Clause 55 requires the holder of an authority or small scale mining tenure to which subdivision 2 applies give a surety in form approved by the scheme manager and sets out the time for payment.

Clause 55(4) allows the scheme manager to extent the period of time to give a surety.

Form of surety

Clause 56 provides the manner in which a surety can be given to the scheme manager. Surety can be given in the form of a bank guarantee or insurance bond in the approved form or on terms and conditions approved by the scheme manager.

Where surety is provided in the approved form, section 48A of the *Acts Interpretation Act 1954* is excluded, therefore requiring surety be provided in strict compliance with the approved form. Additionally, surety can be given to the scheme manager as a cash amount.

Clause 56 provides flexibility to the holder of an authority or holder of a small scale mining tenure to provide surety in one or more forms of surety.

When holder must give increased surety

Clause 57 requires that the holder of an authority subject to an allocation decision is required to maintain surety for its authority in an amount equal to the current ERC determined by the administering authority.

The surety must be provided in the forms approved by the scheme manager under clause 56.

The scheme manager has the discretion to allow the holder an authority additional time to give a surety under this clause.

Release of surety

Clause 58 provides for the release of surety by the scheme manager. The scheme manager must release a surety if:

- the surety is replaced with another in a form approved by the scheme manager; or
- surety is no longer required to be given; or
- an authority or small scale mining tenure for which a surety is given is surrendered.

Clause 58(2) provides the scheme manager must release the surety as soon as practicable.

Notification of administering authority

Clause 59 requires the scheme manager to give notice of the giving of surety to the administering authority, as soon as practicable. The intent of this provision is to ensure the administering authority is aware that the holder has paid the contribution. This is required because section 297 of the EP Act states a holder must not carry out, or allow the carrying out of, a resource activity under an authority unless the holder has paid the contribution.

Subdivision 3 Fees

Assessment fee

Clause 60 requires the holder of an authority to pay the scheme manager an assessment fee for an initial, changed holder or annual review risk category allocation decision (allocation decision) made by the scheme manager. The amount of the assessment fee will be prescribed

by regulation. The assessment fee must be paid 30 business days after the decision is made. The assessment fee is similar to provisions in legislation across the Queensland statute book and is not consider a breach of a FLP.

Administration fee for particular sureties

Clause 61 requires an administration fee be paid if the holder of:

- an authority required to give a surety under Clause 53(d) which is the holder of an authority for which the ERC is less than the prescribed ERC amount; and
- a small scale mining tenure is required to give a surety or replaces a surety.

The amount of the administration fee will be prescribed by regulation. The administration fee must be paid when the surety is given to the scheme manager, or within 30 business days of the surety being given.

The administration fee is similar to provisions in legislation across the Queensland statute book and is not consider a breach of a FLP.

Recovery of unpaid fee

Clause 62 provides that a fee payable under this subdivision may be recovered as a debt payable to the State.

Division 3 Claiming financial provision

Subdivision 1 Payments from scheme fund

Application of subdivision

Clause 63 sets out the circumstances in which the scheme manager may make payments from the scheme fund in response to requests made by the defined requesting entities.

Requesting entity may ask for payment from scheme fund

Clause 64 sets out the requirements for any payment request. In particular, in accordance with Government commitments to stakeholders, clauses 64(3) and (4) require the requesting entity to consult with the advisory committee about any proposed request for payment relating to pre-commencement abandoned mines and scientific research. This does not extend to abandoned operating plant under the recent *Land, Explosives and Other Legislation Amendment Act 2017*.

Decision of scheme manager

Clause 65 provides that the scheme manager must authorise the payment of the costs and expenses from the scheme fund to the requesting entity unless the payment would adversely affect the financial viability of the scheme fund.

Subdivision 2 Realising surety

Application of subdivision

Clause 66 states this subdivision applies if a requesting entity applies to the scheme manager for the payment of costs or expenses by the scheme manager making a claim on, or realising a surety under clause 67.

Section 316F of the EP Act allows the administering authority to ask the scheme manager to realise surety if the administering authority decides to take action under section 316H.

Requesting entity may ask for realisation of surety

Clause 67 provides for the requesting entity to make an application to the scheme manager if the administering authority decides under section 316C(2) of the EP Act to claim the costs and expenses from the scheme manager. The request is made in accordance with clause 67(2).

Realisation of surety

Clause 68 requires the scheme manager as soon as practicable after receiving the request under clause 67 to make a claim on or realise the surety and give the amount to the requesting entity.

Replenishment of surety

Clause 69 provides for the replenishment of surety where the surety has been realised under clause 68. The scheme manager must give the holder of an authority or the small scale mining tenure a notice stating how much surety has been realised and directing the holder to replenish the surety to the amount that was previously held by the scheme manager. It is a condition of an authority that the holder must comply with the direction by the scheme manger to replenish the surety realised by the scheme manager. The scheme manager must notify the administering authority as to whether the holder has complied with the direction to replenish the surety. This allows the administering authority to take compliance under the EP Act to ensure the direction is complied with.

Division 4 Accountability

Guidelines

Clause 70 allows the scheme manager to make guidelines about the operation of the scheme. In particular, clause 70(3) requires the scheme manager create a statutory guideline in relation to the making of allocation decisions for authorities and the assigning of authorities to a relevant holder and the making of decisions under clause 53(c)(ii).

The scheme manger may also make guidelines in relation to the forms of surety.

Scheme manager to keep Minister informed

Clause 71 requires the scheme manager to keep the Minister reasonably informed on a range of matters about the scheme. Clause 71(1)(c) requires the scheme manager to immediately inform the Minister that in the scheme manager's opinion may prevent, or significantly affect, the financial viability of the scheme fund.

Scheme annual report

Clause 72 sets out the scheme manager's annual reporting responsibilities. The scheme manager must prepare an annual report about the administration of the Act and the scheme and must include the matters set out in clause 72(2). The report must also include a summary of information received from the public in the year of the report about the effectiveness of the scheme. The report must be given to the Minister within three months after the end of the year and must be published on the department's website after it is given to the Minister.

Actuarial investigation of scheme

Clause 73 provides that the scheme manager must investigate the actuarial sustainability of the scheme within the prescribed periods as set out in clause 73(6). For that investigation, the scheme manager must appoint an appropriately qualified actuary to give the scheme manager a report about the actuarial sustainability of the scheme.

The actuary's report must include the actuary's opinion about the matters listed in clause 73(3). After the scheme manager completes the investigation, the scheme manager must give the actuary's report to the Minister with the scheme manager's recommendations about the actuary's opinion under subclause 73(3)(b) and any other matter relating to the operation of the scheme.

The scheme manager may also make other inquiries about the operation of the scheme.

Division 5 Effect of decisions

Application for judicial review of particular decisions

Clause 74 provides that the scheme manager's decisions will be subject to the *Judicial Review Act 1991* (JR Act), subject to the limitation that only the holder of an authority for which a decision has been made about an initial risk category allocation or an annual risk category allocation or an interested entity for a changed holder risk category allocation decision can apply. This is reasonable in the circumstances as only those entities are affected by the scheme manager's decision.

Decisions of the scheme manager otherwise final

Clause 75 provides that the scheme manager's allocation decisions under the Act are final unless the Supreme Court upholds an application for judicial review by a person who is aggrieved by a decision of the scheme manager and seeks a review of the decision on the ground of jurisdictional error (or the Supreme Court upholds an application under clause 74). It is considered necessary to include such an express provision in the Act as clause 75 given clause 74 has, in part, the effect of being a privative clause ousting wider review under the JR

Act and also following the decision of the High Court in *Kirk v Industrial Court of New South Wales* (2010) 239 CLR 531.

Subclause (2) provides that, other than a review on the ground of jurisdictional error, a decision of the scheme manager under part 3 of the Act is non-appealable, meaning that the decision is final and conclusive and may not be challenged, appealed against, reviewed, quashed, set aside or called into question in any other way. Subclause (3) provides that the JR Act, part 5, applies to a scheme manager decision under the Act.

No stay of decisions

Clause 76 provides that, where an application has been made for judicial review under clause 74, a scheme manager's allocation decision may not be stayed. This will ensure that contributions to the scheme fund and surety must continue to be provided despite any application to review the risk category allocation.

Part 4 Offences and proceedings

False or misleading statements

Clause 77 creates an offence if a person states or omits from a statement anything to the scheme manager the person knows, or should reasonably know, is false or misleading in a material manner.

This is an offence provision with a maximum penalty of 100 penalty units. This provision is justified as it is proportionate and comparable with other similar provisions across the Queensland statute book.

False or misleading documents

Clause 78 creates an offence if a person gives to the scheme manager a document containing information the person knows, or should reasonably know, is false or misleading in a material particular. Clause 78(2) provides that it is not an offence if the person:

- informs the scheme manager how the document is false or misleading; and
- the person has, or can reasonably obtain the correct information and provides the correct information to the scheme manager.

This is an offence provision with a maximum penalty of 100 penalty units. This provision is justified as it is proportionate and comparable with other similar provisions across the Queensland statute book.

Part 5 Confidentiality

Definitions for part

Clause 79 provides for the definitions of confidential information, disclose and information that apply in this part of the Act.

Duty of confidentiality

Clause 80 imposes a duty of confidentiality on specified persons performing functions under or relating to the administration of this Act.

This is an offence provision with a maximum penalty of 100 penalty units. This provision is justified as it is proportionate and comparable with other similar provisions across the Queensland statute book.

Use or disclosure for authorised purpose

Clause 81 sets out the extent to which confidential information can be used or disclosed.

Disclosure to particular departments for performance for department's functions

Clause 82 provides that the scheme manager may disclose confidential information to the named chief executives if the scheme manager is satisfied the disclosure would assist in the performance of the relevant chief executive's functions under specified Acts.

A person who acquires the confidential information, or has access to, or custody of, the confidential information must not use or disclose it, other than under sub-clause (1). This would include persons assisting in the performance of the relevant chief executive's functions.

Part 6 Miscellaneous

Advisory committee

Clause 83 provides for the chief executive to establish an advisory committee. The advisory committee is to be comprised of appropriately qualified persons with a range of backgrounds to provide advice to a requesting entity about a proposal to seek costs or expenses from the scheme fund for expenditure on pre-commencement abandoned mines and scientific research or to advise the scheme manager about the operation of the scheme. A pre-commencement abandoned mine is defined in the Dictionary as an abandoned mine within the meaning of the *Mineral Resources Act 1989*. The Minister appoints the members of the committee and one of the members as chairperson.

Delegation

Clause 84 provides for the scheme manager to delegate the functions and power of the scheme manager under this Act to an appropriately qualified person. There are no limitations on the functions or powers that may be delegated. As a function can only be delegated to an appropriately qualified person assigned to perform work for the scheme manager, it is considered that the delegation of administrative power is appropriate and not a breach of an FLP.

Protection from liability

Clause 85 provides protected persons from civil liability for an act or omission made in good faith under this Act. Clause 85(2) clarifies that if this clause applies, the liability attaches to the State. A protected person includes the scheme manager or delegate, acting scheme manager and a member of the advisory committee. Additionally, clause 85 provides that if a protected person is a State employee under the *Public Service Act 2008*, section 26C does not apply to the person.

Approved forms

Clause 86 provides that the scheme manager may approve forms for use under the Act.

Regulation-making power

Clause 87 provides that the Governor in Council may make regulations under this Act which may prescribe fees payable under this Act and provide for a maximum penalty of 20 penalty units for a contravention of a regulation.

Transitional regulation-making power

Clause 88 provides for a transitional regulation-making power that enables the making of a regulation that is necessary to enable or facilitate the transition from the financial assurance framework for resource activities under the EP Act to the financial provisioning scheme under the Act.

Part 7 Transitional provisions

Financial assurance given for environmental authority or small scale mining tenure under repealed provisions

Clause 89 provides that the transitional provisions apply to financial assurance provided under the repealed chapter 5, part 12 provisions of the EP Act and financial assurance provided by small scale mining holders under section 21A(2).

Financial assurance taken to be surety given under this Act

Clause 90 provides for the transition of all existing financial assurance for resource activities to the financial provisioning scheme under this Act. The financial assurance is taken to be given as surety under this Act and this Act applies in relation to the surety.

Under proposed section 761 of the amendments to the EP Act under this Bill, an ERC decision is taken to have been made for an authority in the amount of the existing financial assurance for an authority.

An authority with an ERC less than the prescribed ERC amount and a small scale mining tenure will continue to be required to give surety in accordance with the Act.

An authority with an ERC equal to or more than the prescribed ERC amount will continue to be required to give surety in accordance with the Act until such time as the scheme manager makes an initial allocation decision.

This means that if a holder applies for a new ERC decision under the EP Act, the holder must provide additional surety to the scheme manager if the ERC decision is greater than the ERC under section 761(3) of the EP Act.

The transition of financial assurance under the EP Act to surety under this Act does not in any way affect the surety instruments or the obligations given under those instruments.

Initial allocation decision not required until scheme manager gives transition notice

Clause 91 sets out the process for making an initial allocation decision for an authority with an ERC equal to or more than the prescribed ERC amount. This process will commence with the giving of a transition notice by the scheme manager to the holder of an authority. The transition notice must be given within three years from commencement.

Scheme manager may require further information from holder before allocation decision

Clause 92 provides that clause 44 (scheme manager may require further information from holder before allocation decision) applies to the holder of an under the EP Act.

This will allow the scheme manger to collect information from the holder upon commencement of this Act and prior to the giving of a transition notice.

Part 8 Amendment of Acts

Division 1 Amendment of this Act

Act amended

Clause 93 provides that Division 1 Part 7 amends this Act.

Amendment to long title

Clause 94 amends the long title of this act to "An Act to establish a financial provisioning scheme to deal with the environmental impacts of resource activities".

Division 2 Amendment of Environmental Protection Act 1994

Clause 95 provides that Division 2 amends this Act

Amendment of s 21A (Meaning of *prescribed condition*)

Clause 96 amends the meaning of a prescribed condition in section 21A of the EP Act to ensure small-scale mining tenures are captured under the new financial provisioning scheme.

It is a prescribed condition that, before carrying out or allowing the carrying out of a small scale mining activity, the holder of the mining tenure must give the scheme manager a surety, for the amount prescribed under the regulation, and within the period and in the form as outlined in sections 55(3)(c) or (4) and 56 of the *Mining and Energy Resources (Financial Provisioning Act) 2017*.

Prospecting permits are excluded from this requirement because they do not have any prescribed conditions, and are not required to provide financial assurance.

Amendment of Ch5 hdg (Environmental authorities and environmentally relevant activities)

Clause 97 amends Chapter 5 heading to insert a reference to Progressive Rehabilitation and Closure Plans (PRC plans). This Chapter heading is being amended to reflect that this chapter now also relates to PRC plans.

Insertion of new s 111A

Clause 98 inserts new section 111A to add the definition of 'stable condition'. This new section describes the condition land will be rehabilitated to, that is, land that is safe and structurally stable, with nothing on or in the land causing environmental harm and land that is able to sustain a post mining land use.

The term 'stable condition' is used throughout the Bill to reflect the requirements under the government's rehabilitation policy and to clarify the objectives of rehabilitation for land that has been used for carrying out mining activities.

Amendment of s 112 (Other key definitions for Ch 5)

Clause 99 amends section 112 of the EP Act to add definitions for new terms that relate to the new requirement for PRC plans. These are necessary to define key concepts within the new framework.

This clause adds definitions for:

- ***management milestone***: relates to milestones that provide for how any non-use management areas will be managed throughout the life of the mine to meet best practice and minimise risks to the environment.
- ***non-use management area***: defines areas of a site that cannot be rehabilitated to sustain a post-mining land use. To propose a non-use management area in a PRC plan the applicant must provide the information as required in the new sections 126C and 126D.
- ***post-mining land use***: means the use for the mined land after mining activities have ceased.
- ***PRC plan***: this definition is necessary to clarify that a PRC plan includes both the rehabilitation planning part of the document and the enforceable PRCP schedule.

Throughout the life of the mine, the PRC plan as a whole is maintained on the public register, including subsequent dealings such as amendments, amalgamations and partial surrenders.

- ***PRCP schedule***: the PRCP schedule intentionally includes limited information that clearly outlines the schedule of progressive rehabilitation. This definition is necessary to ensure there is no ambiguity as to which parts of the PRC plan are approved with or without conditions.
- ***rehabilitation milestone***: includes milestones for how mined land will be progressively rehabilitated throughout the life of the mine to achieve the post-mining land use.
- ***rehabilitation planning part***: similar to PRCP schedule, this definition is necessary to clarify specific parts of the plan that are intentionally not approved by the administering authority, but are still necessary to explain how the activity will be carried out and enable the administering authority to make an informed decision in approving the PRC plan.
- ***stable condition***: refer back to the new section 111A.

These definitions are necessary to ensure that key concepts are clear and so that the policy intent will be reflected in the EP Act.

Amendment of Ch 5, pt 1, div3, hdg (Stages of assessment process)

Clause 100 amends the Chapter 5 part 1 division 3 heading in the EP Act to add the term "and application". Division 3 of the EP Act relates to the stages of the assessment process including the application, information, notification and decision stages.

This clause clarifies that the division outlines the stages for assessment and application for an environmental authority.

Insertion of new s 114A

Clause 101 inserts a new section 114A.

114A Application of assessment process for proposed PRC plans

This section has been inserted to ensure that parts 3 (information stage), 4 (notification stage) and 5 (decision stage) of Chapter 5 apply to the proposed PRC plan as if the plan were part of the environmental authority application. The requirement to include a PRC plan as part of an application for site specific environmental authority is included in the amendment to section 125.

Requiring the PRC plan to be part of the environmental authority application ensures that both documents are assessed and decided on together through parts 3 to 5 of Chapter 5, increasing administrative efficiency. For example, by requiring the PRC plan with the environmental authority, it means both the draft environmental authority and proposed PRC plan are notified at the same time, which reduces regulatory burden and is easier for the community to consider.

Amendment of ch 5, pt 2, div 3, hdg (Applying for environmental authorities)

Clause 102 amends the heading of chapter 5, part 2, division 3 to ensure the heading reflects that this division will also apply to the new requirement for PRC plans.

Amendment of s 125 (Requirement for applications generally)

Clause 103 amends section 125 of the EP Act to clarify how the new requirement for a PRC plan affects the current requirement to provide rehabilitation information in a site specific application in relation to a mining lease.

Section 125 currently outlines the requirements for the information that must be contained within a variation or site specific application for an environmental authority, which includes information on how the land will be rehabilitated after each relevant activity ceases.

This clause firstly removes the requirement for site specific environmental authority applications relating to a mining lease to provide details about how the land will be rehabilitated in their application. The clause then adds a requirement to this section to provide that, for these site specific applications, they must provide a proposed PRC plan. The clause then renumbers section 125 to reflect the newly inserted requirements.

This amendment is necessary to ensure that for site specific environmental authority applications which relate to a mining lease, there aren't duplicative requirements to provide information on rehabilitation in proponents' applications as well as in the proposed PRC plan, and to make clear that where applicable, all rehabilitation related information should be contained within the proposed PRC plan.

Insertion of new sections 126B – 126D

Clause 104 inserts three new sections in the EP Act to identify the purpose of a PRC plan, to insert the content requirements for a PRC plan and to insert the content requirements of a PRCP schedule. These new sections clearly identify what the 'rehabilitation planning part' of the PRC plan is and what needs to be in the PRC schedule for the PRC plan to be considered properly made.

126B Main purpose of PRC plan

The first new section, 126B clarifies the main purpose of a PRC plan is to provide information on how the relevant activities will be planned in order to maximise progressive rehabilitation of the land, and how the site will be progressively rehabilitated to a stable condition, to allow for surrender.

126C Requirements for PRC plan

The new section 126C inserts the information requirements necessary to be included in the PRC plan and which provide the rationale for the outcomes proposed in the PRC schedule. The content requirements have been designed to ensure that the PRC plan clearly shows the regulator and the community what the final land uses will be and how they will be achieved through the life of the mine.

The section requires that the PRC plan must be in an approved form and must:

- describe and include maps of the relevant activities including their duration and location of where they will be carried out
- outline previous and ongoing consultation activities with the community (community is intended to include mining stakeholders such as the regional community for the proposed mining area, land owners, indigenous communities including native title holders, regional environmental groups and relevant government agencies)
- identifies proposed post-mining land uses and non-use management areas
- for each post mining land use state how progressive rehabilitation will be carried out, including techniques or methodologies, to achieve a stable condition and how risks in achieving the post mining land use will be minimised or managed
- for each non-use management area state the reasons why the applicant considers the area is not able to be rehabilitated to a stable condition, including evidence to support the reasons and methodology for achieving best practice for management of the area. Section 126D provides the criteria to be addressed in the justification.
- other, and more detailed, information may be required by the administering authority.

A guideline will be developed to support the requirements for PRC plans and ensure the structure and content of PRC plans are consistent and comprehensive. This guideline will also be used by the administering authority in section 176A in making a decision on the PRCP schedule. The guideline is made by the Chief Executive under the new section 550.

Section 126C subsection (2) clarifies that the content requirements in subsection (1) are the 'rehabilitation planning part' of the PRC plan. The rehabilitation planning part of the plan are intentionally not approved by the administering authority, therefore these parts are clearly delineated from the PRC schedule. However, both parts of the PRC plan must meet the content requirements and are necessary to give the regulator, the community and the mine operator a clear understanding of how the site will be rehabilitated progressively to support post mining land uses.

126D Requirements for proposed PRCP schedule

New section 126D details the requirements for the PRCP schedule. This section requires that the schedule includes maps outlining the post-mining land uses or non-use management areas for all areas on the site. Maps will make it easier to understand and visualise the plan for the site and how the final outcomes will be achieved.

For each post-mining land use, the PRCP schedule will include milestones and timeframes for progressively rehabilitating the area to the proposed use to achieve a stable condition.

For non-use management areas the PRCP schedule must include management milestones that ensure the area is designed and managed to achieve best practice management and minimise environmental risks.

While it is expected that proponents propose rehabilitation of all areas of the site to a post-mining land use, the framework acknowledges that in restricted circumstances not all land will be able to support a post-mining land use. In these instances, the applicant must propose that the non-use management area be designed and managed to achieve best practice standards and provide evidence to demonstrate the proposed non-use management area meets

set criteria provided in section 126D(2). In addition to achieving best practice, the criteria require evidence that:

- carrying out rehabilitation would cause greater risk of environmental harm than not carrying out rehabilitation of the land; or
- the risks of environmental harm as a result of not carrying out rehabilitation are confined to the land (of the relevant resource tenure) and that failing to rehabilitate the land to a stable condition is justified, having regard to the costs of rehabilitation, and the public interest in the resource activity being carried out.

The criteria will apply to both new 'greenfield' applicants as well as transitioning sites unless otherwise stated in the new transitional provision in section 755. The PRC plan guideline will provide further guidance on how these criteria will apply for the different mining commodities and for new and existing sites.

The first criterion is designed to acknowledge that a mining operation will change the design of the land and in certain circumstances the process of rehabilitation might cause more environmental harm than not re-disturbing the land. This criterion could apply to a transitional site where in preparing a PRC Plan the environmental authority holder may wish to specify an outcome for previously mined areas on the site and for which further disturbance of the site would pose a greater environmental risk than leaving the site undisturbed.

The second criterion has been designed to ensure:

- that design and management of the land constrains the risk to the land (this will ensure that ongoing management of the land is contained to that land and does not move off-site); and
- the costs associated with the rehabilitation works would be so excessive as to outweigh the public interest in carrying out the resource project, as demonstrated through the reports and evidence required in section 126C(1)(h), including benefits to the community.

Examples of benefits to the community from rehabilitation may include productive agricultural land or native wildlife habitats. Examples of benefits from the project include job opportunities in remote communities, including indigenous communities, obtaining resources for industrial use and infrastructure with long term uses after the project has finished.

Application of the second criterion could include, for example, a metalliferous mining operation that has been in progress for many years with a large pit for which there has been no planned or practical strategy for returning to a post-mining land use, and for which the costs of rehabilitating the site would effectively mean the risk of failure of the operator and subsequent passing of the liability to the state. It would be preferable that the operator remains in place and undertakes remedial action to the extent possible, to minimise the environmental risks associated with the site.

In the case of most greenfield sites, it is unlikely that adequate justification for retaining a non-use management area at closure could be provided, having regard to best practice rehabilitation or site management.

126D (3) also contains a prohibition on leaving a void in a floodplain. It stipulates that if an area of land to which the PRC plan relates will have a void situated wholly or partly in a

flood plain during operations, the PRC schedule must provide for the rehabilitation of the area containing the void to a stable condition prior to surrender. This means that in floodplains, all voids must be rehabilitated to be safe and structurally stable, not cause environmental harm by anything on or in the land and be able to sustain a post mining land use.

126D also provides in subsection (4) that planning must occur to ensure the schedule provides for each rehabilitation milestone to occur as soon as practicable after the area becomes available for rehabilitation.

This section further provides the criteria for when land is considered available for rehabilitation. This is necessary to clarify when rehabilitation must begin, for example, once the area has stopped being actively mined. It is also needed to provide for the circumstances where it is not intended to rehabilitate, for example, if the area is a road that will be retained after mining activities have been completed.

This insertion of *Clause 102* is necessary to clearly outline the requirements for a PRC plan and PRCP schedule to support holders to submit a properly made environmental authority application.

Amendment of s 130 (Nomination of principal applicant)

Clause 105 amends section 130 of the EP Act to extend the provision to apply to PRC plans accompanying an environmental authority application. This section states that where there are joint applicants for one or more environmental authorities, a person may be nominated as the principal applicant.

The amendment provides that the principal applicant may, on behalf of all applicants, supply to the administering authority a notice or other document related to the application and any proposed PRC plan accompanying the application. Conversely, the administering authority may give a notice, other document, or make any other requirement under this chapter to all the applicants, by giving it to the principal applicant.

The amendment clarifies that the role and responsibilities of the principal applicant in the receiving and making of notices in relation to the application extend to the proposed PRC plan accompanying the application.

Amendment of s 131 (Meaning of *minor change*)

Clause 106 amends section 131 of the EP Act. This section defines the meaning of a minor change for the purposes of changing an application.

The amendment extends the meaning of a minor change in relation to the environmental authority application to also be relevant to the PRC plan.

This change is necessary to clarify that minor amendments may also be made to a proposed PRC plan contained within an environmental authority application and also to define when a minor change is no longer considered minor.

Amendment of s 132 (Changing application)

Clause 107 amends section 132 of the EP Act to clarify that proponents can make changes to a proposed PRC plan, as part of an application, before the application is decided.

This section specifies the requirements for making a change to an application, before a decision on the application has been made. A person must not change the application if the change would result in the application not being a properly made application. The section further specifies the requirements when a proposed change involves changing an applicant.

Amendment of s 133 (Effect on assessment process—minor changes and agreed changes)

Clause 108 amends section 133 of the EP Act to clarify that, where applicable, this section also applies to a proposed PRC plan.

This section specifies that a minor change to the application or a change that the administering authority agrees to in writing, does not stop the assessment process. Further, if such a minor or agreed change occurs during or after the notification stage, the notification stage does not need to restart.

The amendment ensures that minor changes to a proposed PRC plan have the same effect as minor changes to an environmental authority application.

Amendment of s 134 (Effect on assessment process—other changes)

Clause 109 amends section 134 of the EP Act to clarify that where applicable, this section also applies to a proposed PRC plan.

This provision currently outlines the effect of changes during an environmental authority application assessment process where they are not minor or where the administering authority hasn't given written agreement to the change. The amendment ensures that changes to the proposed PRC plan have the same effect as changes to the environmental authority application, as they are linked.

Amendment of s 139 (Information stage does not apply if EIS process complete)

Clause 110 amends section 139 of the EP Act to ensure that the information stage will not apply to an application unless a major change in the proposed rehabilitation outcome has occurred from the environmental impact statement (EIS) for a project.

This section provides that the information stage of the assessment process does not apply if that application has undergone an EIS and the environmental risks of the activities haven't changed.

The amendment provides that in the case of a proposed PRC plan, the information stage will not apply if since the time the EIS was completed:

- a change to the post-mining land use or a non-use management area has not been made;

- the ability to achieve the rehabilitation outcomes of a 'stable condition' for land has not changed;
- the way a post-mining land use will be achieved, or a non-use management area will be managed, has not changed in a way likely to result in significantly different impacts on environmental values than the impacts on the values under the EIS; or
- the day by which rehabilitation of land is to be achieved has not changed.

This amendment is necessary to ensure that further information can be requested if the scale, timing, nature or environmental risks of the proposed rehabilitation have changed from the EIS assessment. The administering authority must have current, comprehensive information to ensure a proper assessment of the risks and outcomes of the proposed post-mining land uses and non-use management areas can be carried out and adequate conditioning of the PRC plan can occur.

This also means that when the rehabilitation outcomes, identified as post-mining land uses or non-use management areas in the EIS do not change, the proponent is not subjected to the information stage. The Terms of Reference for the EIS will be updated to encourage applicants to prepare a PRC Plan at the EIS stage.

Amendment of s 144 (When information request must be made)

Clause 111 amends section 144 of the EP Act to change the timeframes for when an information request must be made when an environmental authority application is accompanied by a proposed PRC plan.

Section 144 currently requires that for site specific applications, an information request must be made within 20 business days after the application stage ends. The amendment increases the timeframe for those site specific applications that are accompanied by a proposed PRC plan to 30 business days.

The extension of time is necessary to ensure that the administering authority has enough time to determine whether additional information is required to properly consider a proposed PRC plan.

Amendment of s 145 (Extending information request period)

Clause 112 amends section 145 of the EP Act to clarify that the ability of the administering authority to extend the information request period will not be changed when the application includes a proposed PRC plan as part of the environmental authority application.

Currently the administering authority may, by written notice given to the applicant and without the applicant's agreement, extend the information request period by not more than 10 business days.

The amendment clarifies that while the information request period is relevant to environmental authority applications that include PRC plans, only one information notice may be given by as per the current provision in section 145.

Amendment of s 150 (Notification stage does not apply to particular applications)

Clause 113 amends section 150 of the EP Act. This section currently states that the notification stage does not apply where the EIS process has been completed under chapter 3 of the EP Act, the environmental risks of the activity have not changed since the EIS was completed, and the administering authority is satisfied that any changes proposed would not be likely to attract a submission objecting to the change.

The amendment provides that in the case of a proposed PRC plan the notification stage will not apply if since the EIS was completed:

- a post-mining land use or non-use management area has not changed; or
- the proposed day by which the applicant will complete rehabilitation on the site has not changed.

Therefore, unless the rehabilitation outcomes have changed, the proponent does not have to go through the notification stage of the environmental authority assessment process and the assessment proceeds to the decision stage. This removes duplication since the project has already had to satisfy public notification requirements in the EIS on the same basis as the public notice requirements of this stage.

However, where changes are proposed in the PRC plan as per the above, the PRC plan must be publically notified along with the environmental authority.

This amendment is necessary to ensure the appropriate changes to post-mining land uses and non-use management areas trigger the notification stage.

Amendment of s 153 (Required content of application notice)

Clause 114 amends section 153 of the EP Act to require a description of proposed changes in post-mining land uses to be included in the application notice.

Section 153 outlines the content requirements for the application notice to be published in relation to the application. The amendment inserts requirements that, if relevant, the notice must state where there have been major changes to the rehabilitation outcomes (e.g. changes to a post mining land use or addition of a non-use management area) proposed in the PRC plan.

This amendment is necessary to ensure that the published information notice highlights the major changes to rehabilitation outcomes, including post-mining land use decisions.

Amendment of s 160 (Right to make submission)

Clause 115 amends section 160 of the EP Act to expand the ability for an entity to make a submission for a proposed PRC plan.

The current section 160 provides for entities to make a submission to the administering authority about the application. However where the public notification is only in relation to changes since the EIS was notified, then submissions can only be about those changes.

The amendment provides that the current arrangements for environmental authorities are extended to a proposed PRC plan; that is, when notification is due to changes within the assessment process, submissions can only relate to the changes proposed.

Amendment of s 168 (When decision must be made—generally)

Clause 116 amends section 168 of the EP Act to increase the amount of time allowed to make a decision on a site specific application which includes a PRC plan.

Section 168 currently gives the administering authority 20 business days to make a decision and allows for the administering authority to extend the decision period, by written notice given to the applicant and without the applicant's agreement, by not more than 20 business days.

The amendment extends both periods by 10 business days when a PRC plan accompanies the application, taking both of the above periods to a maximum of 30 business days. This amendment is necessary to ensure that the administering authority has sufficient time to consider the PRC plan in making the decision.

The clause also amends this section to clarify that in the circumstance where a PRC plan accompanies an application, that only one notice may be given, that is the timeframe for decision can still only be extended once by the administering authority without agreement.

Amendment of s 172 (Deciding site-specific application)

Clause 117 amends section 172 of the EP Act so that PRCP schedules are captured in the site-specific application decision process. In this section the administering authority must decide whether to grant the application and issue an environmental authority with conditions or to refuse the application. The criteria for this decision are contained in section 176.

The amendment ensures that this section now reflects the requirements for deciding on a PRC schedule. The amendment firstly amends the heading to reflect that the new process of approving or refusing the PRC schedule will occur at the same time as approving or refusing a relevant site specific environmental authority application for a mining lease.

The amendment inserts the requirement that if a PRC plan accompanies the application the administering authority must decide whether to approve the PRC schedule, with or without conditions, or refuse the PRC schedule. Under the new framework an environmental authority for a mining lease that was issued through a site specific application process will be required to have an approved PRC schedule to operate. To ensure this can be achieved, this amendment requires that if a PRC schedule is refused, the environmental authority application must also be refused.

The decisions in this section in relation to a site specific mining lease environmental authority application are expressly excluded from the list of decisions in Schedule 2 of the EP Act, removing the appeal rights for these decisions. This is because applications associated with a mining lease have a particular process where they are referred to the Land Court before the final decision is made by the administering authority. Consequently, the decisions on the application (under this section) are on a 'draft' environmental authority and a PRCP schedule,

which may be subject to the court process before the final decisions are made and the environmental authority is issued.

This section raises the fundamental legislative principle that legislation should make rights and liberties, or obligations, dependant on administrative powers only if subject to appropriate review. Specifically, there is no right of appeal against the final decision on the environmental authority or PRCP schedule. While it is generally inappropriate to provide for administrative decision-making in legislation without providing for a review process, an absence of a provision for such a right of review may be justified by the overriding significance of the objectives of the legislation. Such a justification applies in this case and the absence of an appeal right is deliberate. The administering authority in the cases where this section applies must first make a preliminary decision and the preliminary decision may be referred to the Land Court for its recommendation about the preliminary decision. The administering authority is then required to have regard to the Land Court's recommendation in making its final decision. In effect, the Land Court's review of the preliminary decision is a merits review with all relevant parties being able to put their case forward. Consequently, the lack of appeal against this decision point is justified as the case has already been considered by the courts.

The amendment maintains the status quo for this provision.

Insertion of new section 176A

176A Criteria for decision—proposed PRCP schedule

Clause 118 inserts a new section 176A which lists the criteria for decision for a proposed PRCP schedule. This new section reflects existing section 176 of the EP Act which outlines the criteria for decision making for variation or site specific environmental authority applications.

New section 176A provides that in deciding whether to approve the PRCP schedule the administering authority must comply with any relevant regulatory requirement and, subject to complying with any relevant regulatory requirement must have regard to the application, the proposed PRC plan, any information provided in response to a request and the standard criteria (which includes submissions received for the application). The criteria also includes a guideline made under section 550 about a matter mentioned in section 126C(1)(j).

The insertion is necessary to provide the decision making criteria for the administering authority to consider in making a decision on whether to approve the PRC schedule.

Amendment of s 181 (Notice of decision)

Clause 119 amends section 181 of the EP Act to add requirements for the PRCP schedule decision to be included in the notice of decision for the application.

Section 181 sets out how the process of referral to the Land Court starts. Under this section, the administering authority must give the applicant and any submitters notice of its decision on the application. This notice must state the decision and reasons for the decision, and that the applicant or any submitter may, by written notice to the administering authority, request that the authority refer the application to the Land Court.

This amendment ensures that the applicant and submitters have notice about the basis of the decision for the PRCP schedule and the requirements including conditions which the operator would have to comply with before making a decision whether to make an objection and progress through to the Land Court process.

Replacement of s 190 (Nature of objections decision)

Clause 120 replaces section 190 of the EP Act in order to integrate requirements for objections decisions for a PRC plan and an environmental authority.

190 Requirements for objections decision

The current section 190 gives the range of recommendations that the Land Court can give to the administering authority after an objections decision has been made. The Land Court can recommend that the application be refused, or that the draft environmental authority become the environmental authority for the application, or that the environmental authority be approved with other conditions.

The amendment provides that an objection decision on a PRCP schedule for a PRC plan must be a recommendation to the administering authority that the schedule be approved, with or without conditions, or be refused. The existing subsection (2) which refers to coordinated projects is amended to ensure it refers to any conditions stated under the new subsection (2) in relation to conditions on the PRCP schedule.

The clause also amends the title from "Nature of objections decision" to "Requirements for objections decision" to better reflect the content of the section.

This amendment is necessary to maintain consistency with other stages in the decision process for PRC plans.

Replacement of s 194 (Final decision on application)

Clause 121 replaces section 194 of the EP Act with 3 new sections: "194 Final decision on application", "194A Requirements for final decision" and "194B Matters to be considered in making final decision".

194 When administering authority must make final decision on application

This section applies to an application if an objections decision has been made or if all objections have been withdrawn before an objections decision is made. The administering authority must make a final decision based on the recommendation of the Land Court and the advice received under section 193.

The new section 194 provides for the different timeframes for a decision to be made by the administering authority being 10 business days for applications without a PRC plan or 20 business days for applications with a PRC plan.

The timeframes may apply for an application if advice from the MRA Minister or State Development Minister has ended under section 193 or the administering authority receives the last notice that the last objection is withdrawn under section 182(4).

This section is required to maintain the timeframes for the different circumstances.

194A Final decision on application

The new section 194A identifies the requirements for a final decision to be made on an application for an environmental authority and associated PRCP schedule.

For the environmental authority, the administering authority must decide whether to change its original decision under section 170, 171 or 172. Consequently, the administering authority may either:

- refuse to grant the environmental authority;
- approve the draft environmental authority as an environmental authority; or
- approve an environmental authority which is different from the draft environmental authority. This section includes approving an environmental authority when the original decision was to refuse the application.

For the PRCP schedule, the administering authority may either:

- refuse the proposed PRCP schedule; or
- approve the PRCP schedule with or without conditions.

The new section 194A also reflects the decision requirement in section 172 that if a PRCP schedule is refused, the application for an environmental authority is also refused.

This section is required to ensure the administering authority can make a final decision on the application.

194B Matters to be considered in making final decision

Section 194B identifies the matters to be considered in making a final decision on an application, including the PRCP schedule.

In making the final decision on the application, the administering authority must have regard to:

- any objections decision;
- any advice given by the MRA Minister or the State Development Minister to the Administering authority under section 193; and
- a draft environmental authority and proposed PRC plan for the application.

If a draft environmental authority was not given for the application then the administering authority must comply with any regulatory requirement, and have regard to: the application; any standard conditions for the relevant activity or authority; any response given for the information request; and the standard criteria. This ensures that the decision criteria are re-triggered from section 176 for these applications.

Section 194B(4) requires the administering authority to refuse a PRCP schedule if it is not satisfied that all areas of the PRC plan will be rehabilitated to a stable condition or maintained as a non-use management area in a way that complies with best practice standards for the area and minimises risks to the environment. For non-use management areas, the administering authority must refuse the application if the areas have not been appropriately justified.

This section provides greater structure and clarity around the process for final decisions on an application and how it applies when a PRC plan is part of the application. It also ensures that non-use management areas are only approved when they meet the specified criteria.

Replacement of ss 195 to 197

Clause 122 replaces section 195 of the EP Act with sections "195 Issuing environmental authority or PRCP schedule", "196 Requirements for issuing environmental authority or PRCP schedule" and "197 Including environmental authorities and PRC plans in register".

Although the amendment has extended sections 195 and 197 and inserted a new section 196, the intent and application of the sections remains for the most part un-changed except for capturing PRCP schedules in the existing processes.

195 Issuing environmental authority or PRCP schedule

The current section 195 outlines provisions for issuing a final environmental authority to an applicant and the timeframes for the notice to be given. The amended section is extended to apply when the administering authority decides to approve an application for an environmental authority and a PRCP schedule.

The amended provision requires that the administering authority must issue an environmental authority or PRCP schedule to the applicant within the state timeframes in the new section 196.

196 Requirements for issuing environmental authority or PRCP schedule

Section 195 is supported by the new section 196 which identifies the allowable timeframes for notice to be given for issuing of an environmental authority or PRCP schedule.

The timeframes remain unchanged. This amendment was necessary to simplify the amendments to the Act to include PRC plans.

197 Including environmental authorities and PRC plans in register

Section 197 is amended to ensure environmental authorities and PRC plans are included in the public register. Section 197 ensures transparency of the application process and content of environmental authorities and PRCP schedules is maintained.

Amendment of s 200 (When environmental authority takes effect)

Clause 123 amends section 200 of the EP Act to insert a note that under the new section 297 (inserted by this Bill), the holder of an environmental authority must not carry out the activity until the requirements of section 297 are complied with.

The new section 297 deems a condition that a holder must not carry out resource activities under the environmental authority unless an ERC decision is in force and the holder has paid the annual contribution or given the surety to the scheme manager under the new Financial Provisioning scheme.

This note provides a reminder that though the environmental authority may take effect, the operator must not carry out their activity until the ERC decision requirement has been complied with.

Insertion of new Ch 5, pt 5, div 5A

Clause 124 inserts a new division "5A PRCP schedules" into the EP Act. This division clarifies the requirements of a PRCP schedule and identifies when a PRCP schedule continues in force.

Division 5A PRCP schedules

202A Requirements for PRCP schedule

The new section 202A provides that the PRCP schedule must be in the approved form and contain the conditions imposed by the administering authority. This is necessary because the schedule is the part of the PRC plan that can have enforcement action taken against it. There will be an approved form to ensure that the administering authority is provided with the milestones for each proposed post mining land use or non-use management area in a similar format.

202B When PRCP schedule takes effect

Section 202B provides that the PRCP schedule has effect from the day the environmental authority takes effect. This supports the requirement that a holder must have an approved PRCP in order to undertake the activities to which it relates (new offence provision in section 431A).

202C Term of PRC schedule

Section 202C provides that a PRCP schedule continues in force until the associated environmental authority is cancelled or surrendered. The section also clarifies that the PRCP schedule obligations continue to apply regardless of the environmental authority being suspended.

This new section is necessary to meet the policy objective to ensure progressive rehabilitation on all mine sites in Queensland occurs through the life of the mine. The holder of the PRCP schedule will have made the rehabilitation commitments in the schedule. If the environmental

authority is suspended while activities are being undertaken, the need for rehabilitation and the commitments made to undertake that rehabilitation must continue to apply.

202D PRCP schedule includes conditions

Section 202D provides that the PRCP schedule includes the conditions in the schedule. This is to clarify the schedule (including conditions) is the part of the PRC plan that may be the subject of enforcement action.

202E Environmental authority overrides PRCP schedule

Section 202E applies when there is an inconsistency between an environmental authority and a PRCP schedule. This provision is critical in ensuring the environmental authority prevails in the event of an inconsistency with the associated PRCP schedule.

Amendment of s 203 (Conditions generally)

Clause 125 amends section 203 of the EP Act. This section provides that the administering authority may impose a condition which it considers is necessary or desirable, or a condition that is required under a regulatory requirement. This is extended to PRCP schedules.

This amendment is necessary to ensure the existing provision also applies to imposing conditions on a PRCP schedule.

Amendment of s 205 (Conditions that must be imposed if application relates to coordinated project)

Clause 126 amends section 205 of the EP Act so that conditions imposed by the Coordinator-General are also applicable to the PRCP schedule.

This section ensures that, for an application related to a significant project, conditions for the authority stated in the Coordinator-General's report for the relevant activity are imposed on the authority. Any other conditions imposed on the authority cannot be inconsistent with a condition in the Coordinator-General's report.

This amendment is necessary to maintain consistency with the amendment process for environmental authorities and PRCP schedules. The amendment also ensures conditions of a PRCP schedule and environmental authority are not inconsistent with each other or inconsistent with the Coordinator-General's conditions.

Insertion of new section 206A

206A Conditions for PRCP schedules

Clause 127 inserts a new section 206A into the EP Act which includes conditions that must be imposed in a PRCP schedule.

The section includes two mandatory conditions.

- In carrying out the activities under a PRCP schedule, the holder must also comply with a requirement under the associated environmental authority.

- The holder must comply with each rehabilitation and management milestone and their associated timeframes.

The section also allows the administering authority to impose a condition on a PRCP schedule that requires the holder of the schedule to give the administering authority written notice (a ***statement of compliance***) about a document or work relating to a relevant activity. This condition is similar to existing environmental authority conditions requiring a statement of compliance and is further defined in section 208 of the EP Act.

This section is necessary to ensure that where an environmental authority details the limits on operational activities, including contaminant release limits, the PRCP schedule's rehabilitation activities must also comply with such limits. The amendment will also ensure compliance with milestones, and allow the administering authority to include conditions requiring a statement of compliance.

Amendment of s 207 (Conditions that may be imposed)

Clause 128 amends section 207 of the EP Act to clarify that the section applies to conditions which may be imposed on an environmental authority or draft environmental authority.

The amendment to subsection (1)(e) clarifies that under the new framework, conditions relating to rehabilitation should only be imposed on an environmental authority to the extent that a PRCP schedule does not apply. Where a PRCP schedule applies, the condition will be covered as activities relating to "rehabilitating or remediating environmental harm because of a relevant activity" should be contained within the PRCP schedule.

The amendment also includes a note referring to the deemed ERC condition in the new section 297.

This amendment ensures there is no duplication of conditions between an environmental authority and a PRCP schedule, and that all rehabilitation conditions should be contained in a PRCP schedule. Conditions of an environmental authority prevail as per the new section 202E.

Amendment of s 208 (Condition requiring statement of compliance)

Clause 129 amends section 208 of the EP Act to be extended to a PRCP schedule. Section 208 currently applies if a condition on an environmental authority requires the holder to give the administering authority a statement of compliance.

Section 206A inserts the ability of the administering authority to include a condition requiring a statement of compliance. This amendment is necessary to ensure the administering authority receives sufficient information from the holder as evidence of compliance with a condition of a PRCP schedule.

Amendment of s 210 (Inconsistencies between particular conditions)

Clause 130 amends the heading in section 210 of the EP Act to clarify that this section only applies to inconsistencies between conditions in an environmental authority.

This section clarifies which conditions prevail when particular conditions are inconsistent. If there is an inconsistency between a standard condition, and a non-standard condition in an environmental authority, the non-standard condition prevails to the extent of the inconsistency.

This clarification is necessary because in the event of inconsistencies between conditions of an environmental authority and a PRCP schedule, section 202E identifies that environmental authority conditions prevail. Therefore, this section only applies to environmental authorities.

Amendment of Ch 5, pt 6, hdg (Amending environmental authorities by administering authority)

Clause 131 is an administrative amendment to the heading of Chapter 5, part 6 in the EP Act to become "Amendments by administering authority" so that amendments to PRCP schedules can be captured under this part.

Amendment of s 211 (Corrections)

Clause 132 amends section 211 of the EP Act. This section currently provides that the administering authority may amend an environmental authority to correct a clerical or formal error if the amendment does not adversely affect the interests of the holder of the environmental authority or anyone else. The amendment ensures these corrections can also be made to a PRCP schedule.

The reference to the environmental authority in section 211(a) is removed as an administrative amendment.

This amendment is necessary to ensure errors can be corrected in PRCP schedules if they do not affect the interests of the holder.

Amendment of s 212 (Amendment of particular environmental authorities to reflect NNTT conditions)

Clause 133 amends section 212 of the EP Act to become "212 Amendments to reflect NNTT conditions".

This section provides the administering authority with the power to amend a granted environmental authority for a mining or petroleum activity to ensure compliance with any conditions included in a determination made by the National Native Title Tribunal (NNTT) under section 38(1)(c) of the *Native Title Act 1993* (Cwlth). This only occurs when the activity is 'mining' as defined by the *Native Title Act 1994* (Cwlth) which may include both mining activities and petroleum activities under the EP Act.

This section is needed because native title rights override mining rights in the case of inconsistency. The NNTT determination may be made after the environmental authority is granted, so the administering authority has the power to change the inconsistent conditions to ensure that the environmental authority reflects the NNTT determination.

This amendment is necessary to ensure PRCP schedules can also be captured and may be amended to ensure compliance with conditions included in a determination made by the

NNTT under the Commonwealth Native Title Act in relation to rehabilitation and post mining land uses, as environmental authorities currently are.

Section 212(3) ensures the administering authority gives notice to the environmental authority or PRCP schedule holder of any amendments or additional conditions to maintain transparency and consistency.

Amendment of s 212A (Amendment of particular environmental authorities to reflect regional interests development approval conditions)

Clause 134 amends s212A of the EP Act to ensure that PRCP schedules are captured under this section.

The current section 212A applies if an environmental authority for a resource activity or regulated activity is inconsistent with regional interests, and subsequently allows the administering authority to make amendments to ensure consistency with regional interests' development approvals.

The amendment to section 212A is necessary to allow the administering authority to amend PRCP schedules as well so that the PRCP schedule reflects regional planning interests and objectives and maintains consistency with the environmental authority and regional plans.

Amendment of s 215 (Other amendments)

Clause 135 amends section 215 of the EP Act to reflect amendments by the administering authority on PRCP schedules.

Section 215 currently specifies the instances where the administering authority can amend an environmental authority. The administering authority must either have the holder's consent in writing to the amendments, or have grounds to amend and follow the process in division 2 which provides the holder with the opportunity to say why the amendment should not be made.

The amendments to this section retain the provisions for the environmental authority, extend those provisions relevant to PRCP schedules and include that the PRCP schedule may be amended following receipt of an audit report under the new part 12 of Chapter 5.

Under section 215(2)(p) there is no need to expand the administering authority's ability to amend a PRCP schedule in the case of partial surrender. Only an environmental authority may be partially surrendered; the PRC Plan is amended in response to a partial surrender of the associated environmental authority under the amended surrender provisions.

Amendment of s 216 (Application of div 2)

Clause 136 amends section 216 of the EP Act. Currently, this section provides for natural justice in the amendment process if the administering authority proposes to amend an environmental authority because of a matter in section 215 without the written agreement of the environmental authority holder.

This amendment ensures the same natural justice process applies to an amendment of a PRCP schedule by the administering authority without written agreement by the holder.

Amendment of s 217 (Notice of proposed amendment)

Clause 137 amends section 217 of the EP Act to provide that the administering authority must give the holder a notice in regards to amendments to PRCP schedules.

Currently, section 217 details the requirements of an amendment notice for an environmental authority if the administering authority proposes to make an amendment.

The amendment ensures that the administering authority must also give a notice to the holder of a PRCP schedule, accompanied by the amended PRCP schedule if the PRCP schedule has been amended.

Amendment of s 218 (Considering representations)

Clause 138 amends section 218 of the EP Act to ensure representations on the PRCP schedule are considered by the administering authority before the PRCP schedule is decided.

This section requires the administering authority to consider any written representations made by the environmental authority holder when making its decision whether or not to amend the environmental authority.

The amendment extends the provision to PRCP schedule, ensuring that the holder's views are considered before taking unilateral action to amend the environmental authority or PRCP schedule.

Amendment of s 220 (Notice of amendment decision)

Clause 139 amends section 220 of the EP Act to ensure the notice of the amendment decision for the amendment to the environmental authority or the PRCP schedule is given to the holder.

This amendment is necessary to ensure the holder of a PRCP schedule is informed of any amendment decisions made by the administering authority.

Amendment of s 221 (Steps for amendment)

Clause 140 amends section 221 of the EP Act so that PRCP schedules are captured under this section.

Section 221 currently outlines the provisions for the process and timeframes following an amendment decision for an environmental authority.

The amendment extends the provision to PRCP schedules including the requirement to ensure the administering authority issues an amended PRCP schedule, and includes a copy of the PRCP schedule in the public register. The remaining part of the PRC plan must be provided to the administering authority and also included in the public register under the new requirement in section 316H.

The timeframes remain unchanged. Section 221(d) is renumbered as an administrative amendment.

Amendment of Ch 5, pt 7, hdg (Amendment of environmental authorities by application)

Clause 141 amends Ch 5, pt 7 heading of the EP Act. The original Part heading refers to amendments of environmental authorities. This reference has been removed and the heading now reads "Amendment by application" so that this part applies to both environmental authority and PRCP schedule amendments.

Amendment of s 223 (Definitions for pt 7)

Clause 142 amends section 223 of the EP Act to include definitions for PRCP schedule amendment processes.

Currently, section 223 defines "minor amendment" and "major amendment" for environmental authorities. Specifically, the circumstances which constitute a minor amendment are defined, and a major amendment is anything which is not a minor amendment. The onus is on the applicant to provide enough information to show that their proposed amendment is minor, however the decision of which amendment type is made by the administering authority under division 3 of part 7 – assessment level decisions.

The amendments in this section retain the above for both environmental authorities and PRCP schedules and includes new definitions to differentiate minor and major amendments for PRCP schedules. Definitions differentiating minor and major amendments for environmental authorities remain unchanged.

The major amendment triggers for the PRCP schedule include amendments that:

- changes a post-mining land use or non-use management area; or
- affect whether a stable condition will be achieved for land under the schedule; or
- changes the way a post-mining land use will be achieved, or a non-use management area will be managed, in a way likely to result in significantly different impacts on environmental values to the impacts on the values under the schedule before the change; or
- relates to a new mining tenure for the schedule; or
- changes when a rehabilitation milestone or management milestone will be achieved by more than 5 years after the time stated in the schedule when it was first approved; or
- extends the day by which rehabilitation of land to a stable condition will be achieved.

The 5 year timeframe for changing a milestone is designed to avoid continuous delay of rehabilitation (by incrementally moving the dates forward). It is designed to allow for operational flexibility to allow for changing dates within 5 years without triggering a major amendment.

Major amendment applications will go through the assessment stage where the administering authority may request additional information. The triggers are designed to ensure an

assessment of changes to environmental risks, social risks and rehabilitation acceptability can be made by the administering authority.

In addition, major amendment applications will be required to be publically notified to ensure the community is consulted in the event of major changes to the rehabilitation outcomes or the timeframes for delivering those outcomes previously consulted on.

These amendments are necessary to ensure the administering authority is able to make an assessment level decision on a PRCP schedule application. They are designed to give operators certainty around when an application will be deemed a major amendment, and will enable operators to plan their milestones and timeframes to ensure progressive rehabilitation is able to be achieved while having operational flexibility.

Amendment of s 224 (Who may apply)

Clause 143 amends section 224 of the EP Act to include PRCP schedule holders as being able to apply to amend their PRCP schedule.

Replacement of s 226 (Requirements for amendment application generally)

Clause 144 replaces section 226 of the EP Act with three new sections: '226 Requirements for amendment applications generally', '226A Requirements for amendment applications for environmental authorities', '226B Requirements for amendment applications for PRCP schedules'.

226 Requirements for amendment applications generally

The new section 226 details the requirements for an amendment application generally. This includes the requirements for amendment applications to environmental authorities and PRCP schedules. These include that the application must be in the approved form and be accompanied by a fee prescribed by regulation.

This section is necessary as it describes the minimum requirements for an amendment application to be 'properly made'.

226A Requirements for amendment applications for environmental authorities

The insertion of section "226A Requirements for amendment applications for environmental authorities" retains the same content as section 226 of the pre-amended EP Act and applies specifically to environmental authority amendment applications.

226B Requirements for amendment applications for PRCP schedules

The insertion of a new section "226B Requirements for amendment applications for PRCP schedules" clarifies what content is required for an amendment application for a PRCP schedule. This includes, in addition to the requirements in new section 126, an amended rehabilitation planning part which complies with section 126C.

This provision is necessary to ensure that the administering authority has sufficient information to make an assessment level decision.

By dividing the requirements into the two new sections, it is clear which parts apply to PRC Plan amendments and which parts to environmental authority amendments.

Amendment of s 227A (Early refusal of particular amendment applications and requirement to replace environmental authority)

Clause 145 amends section 227A of the EP Act. It is an administrative amendment to change the reference in section 227(A)(4) from section 314(e) to section 316(P)(3) to reflect the numbering of the amended Act under this Bill.

Amendment of s 232 (Relevant application process applies)

Clause 146 amends section 232 of the EP Act to clarify that if an amendment application is for a PRCP schedule, Parts 3 to 5 apply as if the amendment application were part of a proposed PRC plan accompanying a site-specific application.

This section currently states that the information, notification, and decision stages outlined in Parts 3 to 5, apply to the amendment application for an environmental authority as if it were a site-specific application.

Section 232(2) has also been amended to clarify that the notice under section 229 is in relation to section 230. A note is added to further clarify that Part 4, the notification stage, applies in all cases for a major amendment application of a PRCP schedule, making it clear that public notification will be required for a major amendment to a PRCP schedule.

This amendment ensures that PRCP schedule amendment application are processed through the existing chapter 5 provisions and that the public notification process always applies to major amendments.

Amendment of s 235 (Criteria for deciding amendment application)

Clause 147 amends section 235 of the EP Act to include a reference to the new section 176A, which are the criteria for decision for a proposed PRCP schedule. This amendment is necessary to ensure the relevant decision criteria are used when deciding amendment applications for both environmental authorities and PRCP schedules.

Amendment of s 240 (Deciding amendment application)

Clause 148 amends section 240 of the EP Act to include PRCP schedules.

This section states that the administering authority must decide to refuse or approve the minor amendment application within 10 business days of making the assessment level decision. The administering authority may approve an amendment application if it is satisfied the proposed amendment is necessary or desirable. Further, if the administering authority decides to approve the application, it may also make amendments to the conditions of the environmental authority it considers relate to the subject matter of the proposed amendment, and are necessary and desirable.

The section is extended to minor amendments to a PRCP schedule, with the exception of 240(1)(a) which relates specifically to condition conversions for an environmental authority.

Amendment of s 241 (Criteria for deciding amendment application)

Clause 149 amends section 241 of the EP Act to extend the existing decision criteria for a minor amendment application to a PRCP schedule. The criteria include the application, the existing PRCP schedule and the standard criteria.

Amendment of s 242 (Steps after deciding amendment application)

Clause 150 amends section 242 of the EP Act so that the section applies to a decision for a minor amendment application for a PRCP schedule.

The amendment extends the existing provision to PRCP schedules including the requirement to ensure the administering authority issues an amended PRCP schedule, and includes a copy of the PRCP schedule (and PRC plan included in the application) in the public register.

If the administering authority decides to refuse the application, it must give the applicant an information notice of the decision.

The amendment does not change the timeframes in the existing provision.

Amendment of pt 8, hdg (Amalgamating and de-amalgamating environmental authorities)

Clause 151 amends the heading of part 8 of Chapter 5 of the EP Act to include PRCP schedules.

PRCP schedules may be required to be amalgamated as part of an amalgamation application for an environmental authority. The process is applicant driven, and for amalgamating a PRCP schedule, will be included as part of the environmental authority amalgamation process.

Amendment of s 246 (Requirements for amalgamation application)

Clause 152 amends section 246 of the EP Act to include a requirement that if PRCP schedules will require amalgamation if the application is approved, then the environmental authority application must also include an amalgamated PRC plan (including the planning part of the document and PRCP schedule).

This is necessary to both fully incorporate a process of amalgamation for PRCP schedules as a result of an environmental authority amalgamation application, and to ensure that the PRCP schedule and rehabilitation parts remain consistent with each other.

Amendment of s 247 (Deciding amalgamation application)

Clause 153 amends section 247 of the EP Act by inserting a new subsection that requires the amalgamation of PRCP schedules in the event of an application for the amalgamated project authority for resource activities to which a PRCP schedule applies.

This section provides for the decision to be made by the administering authority for an amalgamation application. The provision retains that the administering authority cannot refuse an application for an amalgamated corporate authority. This is because this is merely an administrative tool, and the amalgamation fee is to cover the administering authority's costs of processing the amalgamation application and issuing a replacement amalgamated authority.

This amendment ensures PRCP schedules, that are associated with two or more environmental authorities, are amalgamated as a result of the environmental authority amalgamation. This amendment ensures that there is only one PRCP schedule (and PRC plan) per environmental authority.

Sections (3) and (4) are renumbered as (4) and (5) respectively as an administrative amendment to reflect the insertion of the new section 3A.

Amendment of s 248 (Steps after deciding amalgamation application)

Clause 154 amends section 248 of the EP Act so that an approval to amalgamate an environmental authority results in an amalgamation of the associated PRCP schedules, and that both amalgamation decisions are actioned and provided to the applicant at the same time.

The amendment requires that, if approved, amalgamated environmental authorities and amalgamated PRC plans are placed on the public register.

Replacement of s 250 (relationship between amendment application and amalgamation application)

Clause 155 replaces the existing section 250 of the EP Act with a new section which applies to both environmental authorities and PRCP schedules.

The existing provision applies in the case when an amendment application for an environmental authority has been made but not decided before an amalgamation application for the authority is decided. In this case the amendment application for the environmental authority is taken to be an amendment application for the amalgamated authority, if the amalgamated authority is approved.

This is because the amendment application may take much longer to decide than the amalgamation application, especially where an EIS is required for the amendment. This section allows the amalgamation to proceed, even where amendment applications are in the process of being determined.

The replaced section 250 retains the policy intent for the provision and clarifies its application to the two amalgamation process options – environmental authority or PRCP schedule – and the results of each.

Amendment of s 250B (Requirements for de-amalgamation application)

Clause 156 replaces section 250B(c) of the EP Act to include a requirement that if PRCP schedules require de-amalgamation as a result of an application to de-amalgamate an

environmental authority, then the application must include proposed de-amalgamated PRC plans for the schedule to be de-amalgamated.

This amendment is necessary to incorporate the process of de-amalgamation for PRCP schedules as for environmental authorities, and to ensure that the PRCP schedule and rehabilitation parts remain consistent with each other throughout these processes.

Replacement of s 250C (De-amalgamation)

Clause 157 replaces section 250C of the EP Act with a new section that captures both the environmental authority and PRCP schedule de-amalgamation processes.

250C De-amalgamation

The new section ensures the administering authority de-amalgamates the environmental authority, and associated PRCP schedule when relevant, to give effect to the de-amalgamation. This amendment is required to ensure there is one PRCP schedule associated with each site-specific environmental authority. The section retains the existing timeframes for de-amalgamating environmental authorities and PRCP schedules.

Insertion of 250C(2) ensures that the de-amalgamation of a PRCP schedule results in the PRCP schedule holder being the same as the environmental authority holder – this is consistent with the definition of holder under Schedule 4 of the EP Act. Insertion of 250(C)(3) ensures that once de-amalgamated, the PRC plans are put on the public register.

This section also includes the maximum 100 penalty units for non-compliance with these requirements. This penalty is justified since it is the same magnitude as other offence provisions that relate to operating in contravention of, or without a required management document in place (for example, applying fertiliser while carrying out an agricultural ERA in certain catchments without an Environmental Risk Management Plan (ERMP)). A de-amalgamated rehabilitation planning part and a de-amalgamated PRCP schedule are both required management documents that must be in place.

Amendment of s 250D (When de-amalgamation takes effect)

Clause 158 amends section 262 of the EP Act to update the cross-reference in section 250D(d) to refer to section 250C(1)(c) instead of 250C(b). This amendment is necessary as an administrative amendment to make the correct reference based on the amendments in this Bill.

Amendment of s 262 (Requirements for surrender application)

Clause 159 amends section 262 of the EP Act to add requirements for surrender applications for environmental authorities which have an associated PRC plan. To clarify, there is no application to surrender a PRCP schedule; rather it ceases to have effect if the environmental authority is surrendered. The process remains unchanged; however, the amendments provide for different information requirements for environmental authorities with, and without a PRCP schedule.

The amendment retains the final rehabilitation report for environmental authorities that do not have an associated PRC plan. Where a PRCP schedule applies to that activity, the application must instead be accompanied by a post-mining management report.

The intent of this change is to ensure a final rehabilitation report is not required by an environmental authority holder that also holds a PRC Plan since there will be a significant duplication of information within the PRC Plan and final rehabilitation report.

However, to retain the link to surrender and residual risk calculation, the post-mining management report will be required in accordance with new section 264A.

The amendment retains the compliance statements requirements with regard to activities under an environmental authority and adds what is required where there is a PRCP schedule.

This amendment is necessary to differentiate between the surrender application requirements for entities with and without a PRCP schedule.

Amendment of ch 5, pt 10, div 3, hdg (Final rehabilitation reports)

Clause 160 amends the heading of Chapter 5, Part 10 Division 3 of the EP Act.

This administrative amendment is to reflect that this division now includes provisions on post-mining management reports.

Insertion of new section 264A

Clause 161 inserts section 264A of the EP Act to add the requirements for post-mining management reports.

264A Requirements for post-mining management report

This new section outlines the requirements for post-mining management reports. These reports relate to holders who have a PRC plan and wish to surrender their environmental authority. Because the PRC plan will contain much of the information currently required in a final rehabilitation report, there is no need for this to be duplicated. Instead, the holder will be required to provide a post-mining management report which contains those parts of the final rehabilitation report that won't be covered in the PRC plan.

These requirements include: a description of the ongoing management requirements of the land, an environmental risk assessment for the land, proposed residual risks as worked out under a guideline and include other matters prescribed under a regulation.

This minimises duplication in the information required to be provided when the holder already has documented significant information on their rehabilitation performance within their PRC plan.

Amendment of s 268 (Criteria for decision generally)

Clause 162 amends section 268 of the EP Act to insert the requirement for the administering authority to consider the post-mining management report and the compliance statement for any associated PRCP schedule in deciding an environmental authority surrender application.

This is necessary to ensure the administering authority considers all information relevant to the application when making a surrender application decision.

Amendment of s 268A (Criteria for decision—prescribed resource activities in overlapping area)

Clause 163 amends section 268A of the EP Act to clarify that the consideration requirements listed in section 268A for surrender of an environmental authority in the case of a prescribed resource activity in an overlapping area should also apply to PRCP schedules.

This insertion is required to ensure the administering authority considers this information relevant to the application for surrender of a prescribed resource activity with respect to PRCP schedules as well. It is necessary because the definition of "prescribed resource activity" includes a resource activity carried out under a mining lease for coal, which will have an associated PRCP schedule under the new framework. Therefore, these considerations should apply to both the environmental authority and PRCP schedule in the case of an application to surrender of this type of environmental authority.

Amendment of s 269 (Restrictions on giving approval)

Clause 164 amends section 269 of the EP Act.

This section states the circumstances under which the administering authority may approve a surrender application. The surrender application may only be approved where the authority is satisfied the conditions of the environmental authority have been complied with. In addition, where the environmental authority requires rehabilitation before surrender, the administering authority must be satisfied that either the land has been satisfactorily rehabilitated or that it will be under a transitional environmental program.

The amendment to section 269(1)(b) is necessary to separate environmental authorities which do and do not have an associated PRCP schedule. The amendment ensures environmental authorities without PRCP schedules continue to conduct rehabilitation activities in line with their environmental authority, and in the event of poor rehabilitation efforts, commit to a transitional environmental program. This intent is retained in the amendment.

Environmental authorities that do have an associated PRCP schedule will require all rehabilitation under the PRCP schedule to be carried out to meet milestones of the schedule. The insertion of section 269(1)(c) requires the administering authority to be satisfied that all milestones set out under the PRCP schedule have been met in order to approve a surrender application.

These amendments are necessary to provide clarity in light of the new PRC plan framework and to ensure an environmental authority surrender application is not approved unless all rehabilitation has been completed.

Insertion of new s 269A

Clause 165 inserts new section 269A into the EP Act.

269A Effect of approval of surrender application on PRCP schedule

This section applies if the administering authority approves a surrender application for an environmental authority that has an associated PRC plan. Section 269A ensures a PRCP schedule ceases to have effect upon the surrender of an associated environmental authority. This insertion is necessary to identify when a PRCP schedule may cease to have effect.

Amendment of s 275 (Steps after deciding surrender application)

Clause 166 amends section 275 of the EP Act to insert a new provision that requires written notification to be given to the scheme manager upon surrender of an environmental authority.

This insertion is necessary because the scheme manager needs to know when an environmental authority ceases to have effect so any action necessary, for example discharging a surety, can be taken.

Insertion of new ss 275A

Clause 167 inserts a new subsection 275A into the EP Act.

275A Administering authority may amend PRCP schedule

This section applies if a surrender application for part of an environmental authority with an associated PRCP schedule is approved. This amendment allows the administering authority to amend a PRCP schedule in the instance where a partial environmental authority surrender results in the PRCP schedule or a condition becoming redundant.

This ensures PRCP schedules are up to date and applicable to the associated environmental authority. The administering authority must give the holder notice of the amendment and record the amendment in the relevant register to ensure all parties are aware of the changes to the statutory documents, and to maintain transparency.

The remaining part of the PRC plan (the rehabilitation planning part of the plan) must be provided to the administering authority and also included in the public register under the new requirement in section 316H.

Amendment of s 278 (Cancellation or suspension by administering authority)

Clause 168 amends section 278 of the EP Act to cross reference to the new ERC and financial assurance sections and to insert two additional events for cancellation or suspension of an environmental authority.

This section sets out when the administering authority may cancel or suspend an environmental authority. Mostly, these events are included in other enforcement mechanisms,

and cancellation or suspension of the environmental authority would be one of the enforcement tools considered by the administering authority.

The two events added are a failure to comply with a requirement to pay a contribution or surety to the scheme manager under this Bill and a failure to comply with a PRCP schedule.

These additions are required to ensure compliance with the new requirements introduced by the Bill – that is, the requirement to pay a contribution or provide surety to the scheme manager and the requirement to comply with the PRCP schedule.

Insertion of new s 278A

Clause 169 inserts a new section 278A into the EP Act.

278A Effect of cancellation or suspension of environmental authority on PRCP schedule

The insertion of section 278A is necessary to provide for what happens in the event of an environmental authority cancellation or suspension in relation to the PRCP schedule.

In the case of a suspension, the section provides that a PRCP schedule continues in force for the relevant activity. This ensures the proponent's obligation to comply with both the operational limits of the environmental authority and the commitments to rehabilitation continue in the event that their right to operate ceases.

In the case of a cancellation of an environmental authority, the section provides for the cancellation of the PRCP schedule. Where an environmental authority is cancelled, the holder no longer will be able to, or be required to, undertake any activities on the tenure, including rehabilitation.

Amendment of s 284E (Restrictions on giving approval)

Clause 170 amends section 284E of the EP Act to retain the current requirement that a suspension application cannot be approved if it contains rehabilitation obligations.

Currently, the section states approval may only be given if the environmental authority is not subject to rehabilitation conditions.

Because the rehabilitation requirements will be moved to PRCP schedules, the amendment ensures that the administering authority may only approve an application for suspension if a PRCP schedule does not apply for the carrying out of relevant activities under the environmental authority.

This amendment retains the status quo.

Replacement of ch 5, pt 12 (General provisions)

Clause 171 replaces the existing Chapter 5 Part 12 with new Chapter 5 Parts 12 to Part 15.

Part 12 includes the new PRCP schedule auditing requirements.

Part 13 retains the plan of operation provisions for petroleum leases.

Part 14 includes to the matters relating to costs of rehabilitation and the new ERC decisions for resource activities and financial assurance for prescribed ERAs.

Part 15 includes general chapter 5 provisions, such as annual return provisions and re-inserted sections that have been re-numbered such as changes to anniversary days and compliance with eligibility criteria.

Part 12 Auditing PRCP schedules

Division 1 Requirements for audit

285 PRCP schedule must be audited

This section inserts an obligation on a holder of a PRCP schedule to commission a rehabilitation auditor every 3 years to conduct an audit of the PRCP schedule and submit an audit report 4 months after the end of the audit period. Along with the audit report, a declaration must also be provided stating that the holder has not provided misleading information to the auditor and has given the auditor all relevant information.

The PRCP schedule audit obligation is essential to ensure that progress towards the post-mining land uses in the PRCP schedule is continuing and any issues are addressed in a timely manner.

This section sets a maximum 100 penalty units for non-compliance with these requirements. This penalty is justified since it is the same magnitude as similar provisions in the pre-amendment EP Act that relate to operating in contravention of, or without a required management document in place (for example, the requirement for a person who carries out an agricultural ERA to make and keep a record in the approved form which also carries a maximum 100 penalty units for violation). The audit report is likewise a required management document that will inform lawful operation under the environmental authority, and therefore this penalty is justified.

286 Requirements for report about PRCP schedule audit

This section inserts the requirements for the PRCP schedule audit report to be in an approved form and list the mandatory requirements in this section. The auditor report will be used by the administering authority to assess the operator's progress towards achieving the milestones for post-mining land uses or non-use management areas in a PRCP schedule. As a result of an audit report, the administering authority may amend a PRCP schedule (included in section 215) to ensure progressive rehabilitation towards post-mining land uses is achieved or non-use management areas are being appropriately managed.

To enable the administering authority to have the necessary information, this section ensures the audit report will contain an assessment of whether the holder has progressed towards the milestones approved in the PRCP schedule and whether the holder has complied with conditions imposed in the schedule. It will also include any recommendations about any

actions the holder should take to achieve milestones in the schedule and an assessment of whether the post-mining land uses are likely to be achieved based on the current rehabilitation activities being taken.

This section also provides for further information to be required by the administering authority. It is expected that guidance material, such as a guideline for audit reports, will be developed to support auditors.

Division 2 Steps after receiving audit report and rehabilitation auditors

287 Administering authority may request further information

This section allows the administering authority to request further information from the holder of the PRCP schedule when deciding whether to amend a PRCP schedule under Part 6 of Chapter 5.

The request must be made 10 business days after the report is received and state a period of 20 business days for the holder to provide the information. The intent of this provision is to increase administrative efficiency and decrease burden, so it allows the holder to provide any information that the administering authority may need before the administering authority takes any further action.

288 Rehabilitation auditors

This section requires a rehabilitation auditor to meet the requirements decided by the chief executive. These requirements will be provided through information material such as a guideline which will address the qualifications and experience rehabilitation auditors will be required to have to be commissioned by the holder of a PRCP schedule.

This section clarifies that Chapter 12 (Miscellaneous), Part 3A (Auditors) of the EP Act does not apply in relation to rehabilitation auditors. This is to ensure that there are a sufficient number of qualified people who can serve as independent auditors and to eliminate the step of having the administering authority certify the auditors in advance.

Part 13 Plan of operations

289 Definition for part

The new section 289 amends the existing plan of operation provisions in the EP Act to limit its application to environmental authorities for petroleum leases. This is because the new PRC Plan requirements replace the plan of operations requirements for mining leases.

This section replaces section 285 of the pre-amendment EP Act and defines plan of operations to be a plan for a petroleum lease only.

290 Application of part

This section replaces section 286 of the pre-amendment EP Act. The new section ensures that Part 13 only applies to an environmental authority for a petroleum activity authorised under a petroleum lease if the petroleum activity is an ineligible environmentally relevant activity.

291 Plan of operations required before acting under petroleum lease

This section replaces, and is similar in content to, section 287 of the pre-amendment EP Act. This section retains the requirement that the environmental authority holder must submit a plan of operations at least 20 business days before they start carrying out the activity under the relevant lease. The plan must also comply with the content requirements under section 292.

This section retains the maximum 100 penalty units for non-compliance with these requirements. This penalty is justified since it is the same penalty as in the pre-amendment EP Act and is also the same magnitude as other offence provisions that relate to operating in contravention of, or without a required management document in place (for example, applying fertiliser while carrying out an agricultural ERA in certain catchments without an Environmental Risk Management Plan (ERMP)).

The section includes a note linking the plan of operations requirement to the new requirements under section 297 which ensures the holder of the environmental authority has an ERC decision in force and has paid the annual contribution or given a surety to the scheme manager under the *Mineral and Resources (Rehabilitation Assurance) Act 2017*.

This section is necessary to retain the obligation of holders of environmental authority for a petroleum lease to continue to provide a plan of operations and to clarify that there is an additional requirement to have a current ERC decision and to make annual contributions or surety to the scheme manager.

292 Requirements for plan of operations

This section replaces section 288 of the pre-amendment EP Act and includes a new requirement for the plan of operations to be in an approved form and for the compliance statement to be signed by either:

- the holder of the environmental authority - if the holder is an individual; or
- an executive officer of the corporation – if the holder is a corporation.

The two new requirements will ensure that plan of operations are provided to the administering authority in a consistent way and executive officers of corporations are held accountable for the information provided in the plans.

In addition, the requirement to provide a proposed amount of financial assurance is removed from the pre-amended section as this requirement is replaced by the new ERC provisions.

293 Amending or replacing plan

This section replaces section 289 of the pre-amendment EP Act. The section allows holders of environmental authorities to amend or replace their plan of operations before the term of

the plan ends. This is primarily an administrative amendment to update the internal references to reflect the new section numbers of this Bill.

294 Failure to comply with plan of operations

This section replaces section 290 of the pre-amendment EP Act and retains the offence if the holder of the environmental authority for a petroleum lease does not comply with the plan of operations.

The magnitude of the penalty (100 penalty units) is the same as in the pre-amendment EP Act and is also the same magnitude as other offence provisions that relate to operating in contravention of, or without a required management document in place (for example, applying fertiliser while carrying out an agricultural ERA in certain catchments without an Environmental Risk Management Plan (ERMP)).

295 Environmental authority overrides plan

This section replaces section 291 of the pre-amendment EP Act and states that, if there is any inconsistency between an environmental authority and a relevant plan of operations, the conditions of the environmental authority prevail to the extent of any inconsistency with the plan. If the holder of an environmental authority becomes aware of an inconsistency between the conditions of the environmental authority and the plan of operations, they must amend the plan of operations to remove the inconsistency within 15 business days.

The magnitude of the penalty (100 penalty units) is the same as in the pre-amendment EP Act and is also the same magnitude as other offence provisions that relate to operating in contravention of, or without a required management document in place (for example, applying fertiliser while carrying out an agricultural ERA in certain catchments without an Environmental Risk Management Plan (ERMP)).

Part 14 Matters relating to costs of rehabilitation

Division 1 Estimated rehabilitation costs for resource activities and ERC decisions

296 Definitions for division

This section includes new definitions for the ERC provisions in the new Part 14 of Chapter 5 of the EP Act. The ERC decision replaces the financial assurance provisions for all resource activities and therefore new terms have been added.

This clause adds definitions for:

- ***ERC decision*** **-** The decision made by the administering authority about the ERC for a resource activity.
- ***ERC period*** **-** The ERC period is required as it triggers a re-calculation and application for a new ERC decision. The ERC period is not the same for all resource activities and may be a period:

  - between 1 and 5 years when a PRCP schedule applies or the activity is operating under a petroleum tenure granted under the *Petroleum Act 1923*
  - nominated in the plan of operation for a petroleum lease
  - that is the total period of the activity (for environmental authority holders that do not fit under (a) or (b) such as those operating under an ERA standard).
- ***estimated rehabilitation cost*** **–** refers to new section 300(1).

These definitions are necessary to ensure that key concepts relating to "estimated rehabilitation costs for resource activities" are clear and so that the policy intent will be reflected in the EP Act.

297 Condition about ERC decision

This section states that it is a condition of the environmental authority for a resource activity that the holder must not carry out the activity unless:

- an ERC decision is in force; and
- the holder has paid the annual contribution or given a surety to the scheme manager in compliance with the *Mineral and Energy Resources (Financial Provisioning) Act 2017*.

This means resource activities cannot lawfully be carried out under an environmental authority for a resource activity if an ERC decision is not in force and annual contributions or surety have not been given. This requirement is a set condition of all environmental authorities for resource activities.

Insertion of this mandatory condition is required to implement the government's policy that all resource activities must have an ERC decision in force to carry out their operation and enables the government to manage the risks to the state through the *Mineral and Energy Resources (Financial Provisioning) Act 2017*.

298 Applying for an ERC decision

This section provides that the holder of an environmental authority for a resource activity will be required to apply for an ERC decision. This section supports section 297 in that activities can only lawfully be carried out under the environmental authority when an ERC decision is current.

The application must include the information necessary to allow an ERC decision to be made. This includes stating an ERC period and the amount the holder considers to be an estimate of the total cost of rehabilitating the land, calculated in accordance with a methodology decided by the chief executive.

To support the ERC decision application, including specifying the methodology to be used to calculate the ERC, a guideline will be developed under section 550.

The application must be accompanied by a compliance statement that the estimate of the total cost of rehabilitation was worked out in compliance with the methodology required and that when a PRCP schedule or a plan of operation applies the estimate is consistent with the schedule or plan.

This section is necessary to ensure that holders of environmental authorities for resource activities are aware of the requirements for an ERC decision application.

299 Administering authority may require additional information

This section allows the administering authority to request further information necessary to make the ERC decision. The administering authority will have 10 business days after receipt of the application to give the holder written notice requesting further information. The notice must provide for at least 10 business days for the holder to respond. The administering authority may make the decision without the further information if the holder fails to provide the information requested.

This provision is necessary to increase administrative efficiency, by allowing for an information request process in the event of missing or confusing information. The timeframes are necessary to ensure an ERC decision is made reasonably quickly, since activities can only lawfully be carried out under the environmental authority when an ERC decision is current, and the scheme manager needs an ERC decision to carry out the risk assessment.

300 Making ERC decision

This section states when the ERC decision must be made, and that the administering authority must have regard to how the cost was estimated. The section also specifies that the ERC decision takes effect on the day the decision is made and remains in force until the end of the ERC period for the decision.

This section is necessary to set the timeframes for the ERC decision process, so that both the administering authority and holder have clarity on the timeframes applicable. It is also required to provide the administering authority with the decision making criteria and the period for which the ERC remains in force for.

301 Notice of decision

This section states that a notice will be sent to the holder and the scheme manager after the ERC decision is made. The notice will include the ERC and the period for which the ERC decision is in force.

These provisions are necessary so that the relevant parties are notified of an ERC decision. The scheme manager must be notified of the decision in order to trigger the remainder of the process relating to the financial provisioning scheme under the *Mining and Energy Resources (Financial Provisioning Act) 2017*.

302 Application for new ERC before expiry

This section adds the requirement that the holder of an environmental authority must apply for a new ERC decision under section 298 at least three months before the expiration of their current ERC decision. This requirement is necessary to allow for sufficient time for the ERC decision, and to ensure that there is no gap created between ERC decisions.

This section sets a maximum 100 penalty units for non-compliance with these requirements. This penalty is justified since it is the same magnitude as similar provisions in the pre-amendment EP Act that relate to operating in contravention of, or without a required management document in place (for example, the requirement for a person who carries out an agricultural ERA to make and keep a record in the approved form which also carries a maximum 100 penalty units for violation).

303 Administering authority may direct holder to re-apply for ERC decision

This section states that the administering authority may give the holder of an environmental authority for a resource activity a notice with a requirement to apply for a new ERC decision.

This provision acknowledges that there are certain circumstances where changes to the carrying out of the activities may increase the likely maximum amount of ERC for the stated period, which is a critical element of the ERC decision. The administering authority is allowed to require the holder to apply for a new ERC decision to address the risk of having an ERC decision that does not reflect the increased ERC through a written notice.

This section sets a maximum 100 penalty units for non-compliance with these requirements. This penalty is justified since it is the same magnitude as similar provisions in the pre-amendment EP Act that relate to operating in contravention of, or without a required management document in place (for example, the requirement for a person who carries out an agricultural ERA to make and keep a record in the approved form which also carries a maximum 100 penalty units for violation).

304 When holder must re-apply for ERC decision

This section states that the holder must apply for a new ERC decision if the holder becomes aware of an increase in the likely maximum amount of rehabilitation cost as a result of the holder carrying out the resource activity, including if that change was reflected in an annual return. A period of 10 business days applies.

This section sets a maximum 100 penalty units for non-compliance with these requirements. This penalty is justified since it is the same magnitude as similar provisions in the pre-amendment EP Act that relate to operating in contravention of, or without a required management document in place (for example, the requirement for a person who carries out an agricultural ERA to make and keep a record in the approved form which also carries a maximum 100 penalty units for violation).

305 Effect of re-application on ERC decision

This section clarifies that whenever the administering authority makes a new ERC decision the existing ERC decision ceases to have effect. The new ERC decision replaces the existing ERC decision as soon as a new ERC decision is made.

Division 2 Financial assurance for prescribed ERAs

306 Application of division

This section clarifies that Division 2 applies in relation to environmental authorities for prescribed ERAs. Financial assurance requirements were replaced by ERC decision requirements for environmental authorities for resource activities. Therefore this provision clarifies that this division is not applicable to environmental authorities for resource activities.

307 Requirement to give financial assurance for environmental authority

This section replaces section 292 of the pre-amendment EP Act so it now applies only to environmental authorities for prescribed ERAs.

This section sets out when the administering authority may impose a condition on the environmental authority for prescribed ERAs which requires payment of financial assurance. A financial assurance may be required as security to ensure that the conditions of the environmental authority are complied with or to cover the government's potential costs associated with rehabilitation or compliance with an environmental authority where the holder does not meet their obligations.

The condition may require that the financial assurance be paid prior to the commencement of operations and may continue in force, even after the surrender of the environmental authority, until the administering authority is sure that a claim on it is not likely to be made.

The administering authority can only impose a condition requiring a financial assurance if it is satisfied that it is necessary after considering the degree of risk of environmental harm being caused, the likelihood of action being required to rehabilitate or restore the environment because of environmental harm being caused by the activity and the environmental record of the holder.

This section retains the status quo for prescribed ERAs.

308 Application for decision about amount and form of financial assurance

This section replaces section 294 of the pre-amendment EP Act. However, it now only applies to environmental authorities for prescribed ERAs.

This section states that the holder of an authority for a prescribed ERA, which requires a financial assurance to be given, can apply to the administering authority for a decision about the amount and form of the financial assurance.

The section has been re-worded to be consistent with the ERC decision application requirements in section 298. In particular, the application must include the information required under a ***financial assurance guideline***. This term is defined in the Dictionary as a guideline made by the chief executive under section 550(a) about information mentioned in section 309(3)(b) or 312(d).

309 Deciding amount and form of financial assurance

This section replaces section 295 of the pre-amendment EP Act. However, it now only applies to environmental authorities for prescribed ERAs.

This section states that the administering authority must decide the amount and form of financial assurance required. This decision must be made within 10 business days of receiving the application for financial assurance or a further period agreed with the holder.

The administering authority cannot require an amount for financial assurance that is likely to exceed the amount required to rehabilitate or restore and protect the environment because of the harm caused by the activity.

310 Notice of decision

This section replaces section 296 of the pre-amendment EP Act. However, it only applies to environmental authorities for prescribed ERAs.

This section states that the administering authority must give the holder of the environmental authority for a prescribed ERA an information notice about the decision within 5 business days of making a decision. This information notice enlivens the review and appeal provisions of the EP Act.

311 Application to amend or discharge financial assurance

This section replaces sections 302 and 303 of the pre-amendment EP Act to now only apply to environmental authorities for prescribed ERAs.

This section states that a person who has given a financial assurance to the administering authority under a condition imposed on an environmental authority for a prescribed ERA may apply to have the amount or form of the financial assurance amended, or have the financial assurance discharged.

The application requirements include whether it is to amend or discharge the financial assurance and the details of the amendment. The application must include the information required under a ***financial assurance guideline***. This term is defined in the Dictionary as a guideline made by the chief executive under section 550(a) about information mentioned in section 309(3)(b) or 312(d).

312 Administering authority require compliance statement

This section replaces section 304 of the pre-amendment EP Act. However, it now only applies to environmental authorities for prescribed ERAs.

This section states that the administering authority may, by written notice, require a compliance statement for financial assurance amendment applications for an environmental authority for prescribed ERAs. The section further specifies what the compliance statement must contain, if one is required. The section retains the status quo.

313 Deciding application

This section replaces section 305 of the pre-amendment EP Act. However, it now only applies to environmental authorities for prescribed ERAs.

This section states that the administering authority must decide, within the relevant period, to approve or refuse the amendment application. If the decision is to refuse the application, the administering authority must give the applicant an information notice about the decision. The information notice then enlivens the review and appeal provisions of the EP Act.

The section further indicates the criteria that must be considered if the administering authority is deciding an application to amend the amount or form of the financial assurance. In this instance, the administering authority must have regard to the information provided in the application.

Further, the administering authority may only approve an application to discharge a financial assurance if it is satisfied that no claim is likely to be made on the assurance.

For applications as a result of a transfer application for an environmental authority the administering authority may withhold making a decision on the amendment application until the financial assurance has been paid by the new holder and the transfer has taken effect.

314 Power to require a change to financial assurance

This section replaces section 306 of the pre-amendment EP Act. However, it now only applies to environmental authorities for prescribed ERAs. It provides that the administering authority may, at any time, require the holder of an environmental authority to change the amount of financial assurance.

Before making this requirement, the administering authority must give the holder of the environmental authority written notice which states the new form and amount and give the holder the opportunity to make submissions about why the financial assurance should not be changed. The administering authority must consider any written submissions before deciding to change the financial assurance. The administering authority must give the holder an information notice about its decision which enlivens the review and appeal provisions of the EP Act.

315 Replenishment of financial assurance

This section replaces section 307 of the pre-amendment EP Act. However, it now only applies to environmental authorities for prescribed ERAs.

This section provides that the administering authority can require a holder of an environmental authority that is still in force to replenish the financial assurance in the circumstance that all or part of the financial assurance has been realised. The administering authority must give the holder a notice stating how much of the financial assurance has been used, and direct the holder to replenish the financial assurance within 20 business days after receiving the notice, so that the financial assurance complies with the amount and form stated in the decision notice for the financial assurance.

Division 3 Claiming

316 Definitions for division

This section inserts the following new definitions for the terms introduced in this division:

- ***environmental authority*** – includes a cancelled or surrendered environmental authority.
- ***EPA assurance*** – refers to a financial assurance for prescribed ERAs.
- ***scheme assurance*** – refers to the contribution or surety given to the scheme manager under the *Mineral and Energy Resources (Financial Provisioning) Act 2017*.

These definitions are necessary to ensure that key concepts are clear and so that the policy intent will be reflected in the EP Act.

316A Reference to EPA assurance or surety

This section clarifies that any reference in this division to claiming or realising an EPA assurance or surety includes a reference to claiming or realising part of the EPA assurance or surety. This insertion is necessary to clarify that a reference to the whole, in this instance also includes reference to a part.

316B Application of the division

This section replaces section 298 of the pre-amendment EP Act. However, it has been amended to refer more broadly to additional types of assurance which have been created.

It retains the reasons for claiming financial assurance, or scheme assurance, that is to prevent environmental harm or secure compliance with an environmental authority, or a prescribed condition for a small scale mining activity.

316C Administering authority may claim or realise EPA assurance or ask scheme manager for payment

This section sets out the circumstances where the administering authority is able to claim or realise the EPA assurance or ask the scheme manager for a payment. The processes for claiming or realising EPA assurance are set forth separately, and are intentionally different to, the processes set forth for asking the scheme manager for payment under the new *Mineral and Energy Resources (Financial Provisioning) Act 2017*.

For an entity which has provided a scheme assurance, these provisions allow for the administering authority to ask the scheme manager for either payment of the costs and expenses from the scheme fund or if the costs and expenses relate to an authority for which a surety has been given, then payment of the costs and expenses by the scheme manager making a claim on or realising the surety.

316D Notice about claiming or realising EPA assurance or asking scheme manager for payment

This section replaces section 299 of the pre-amendment EP Act. However, it has been amended to refer more broadly to additional types of assurance which have been created.

This section sets out the prerequisites for the administering authority to claim or realise the EPA assurance or ask scheme manager for payment. The administering authority must give written notice to the entity who gave the surety or the EPA assurance before claiming it.

316E Considering representations

This section replaces section 300 of the pre-amendment EP Act. This section states that the administering authority must consider any written representations made by the entity who gave the EPA assurance or gave a surety under the scheme.

316F Decision

This section replaces section 301 of the pre-amendment EP Act. This section states that the administering authority must decide whether to make the claim or realise the EPA assurance or ask for a payment under the Mineral and *Energy Resources (Financial Provisioning) Act 2017* 10 business days after the end of the period for the entity to make representations. The administering authority must give the entity an information notice about the decision within 5 business days after making the decision. This enlivens the review and appeal provisions of chapter 11 part 3 of the EP Act.

Part 15 General provisions

Division 1 Requirement for holders of PRC plan

316G Obligation to give amended rehabilitation planning part to administering authority

This section has been inserted ensure the holder of a PRCP schedule provides an amended rehabilitation planning part to the administering authority whenever the PRCP schedule is amended through the provisions of Chapter 5. The holder must give the document within 10 business days of the schedule being amended.

This insertion is necessary to ensure that the rehabilitation planning parts and the PRC plan remain up to date and consistent with the PRCP schedule as it changes through the life of the project and are inserted in the public register.

This section sets a maximum 100 penalty units for non-compliance with these requirements. This penalty is justified since it is the same magnitude as similar provisions in the pre-amendment EP Act that relate to operating in contravention of, or without a required management document in place (for example, the requirement for a person who carries out an agricultural ERA to make and keep a record in the approved form which also carries a maximum 100 penalty units for violation). The rehabilitation planning parts and PRCP

schedule make up the whole of the PRC plan, which is a required management document, and therefore the penalty is justified.

Division 2 Annual fees and returns

316H Annual return for environmental authorities

This section applies to an environmental authority for which an annual fee is prescribed under a regulation. Section 308 of the pre-amendment EP Act set the requirements for annual returns and stated that a notice was sent by the administering authority requiring compliance requiring the holder to provide an annual return and pay the annual fee. The administering authority, in practice, sent requests to all environmental authority holders requesting annual returns and payment of fees. A consistent collection of annual returns provides for better reporting and tracking of compliance.

The amended section 316I maintains this intent and states the obligation to all environmental authority holders to provide an annual return and annual fees in accordance with the section, but without a notice being sent. This section, and the elimination of the notice, will allow for the delivery of better outcomes with a reduction of administrative burden.

For an environmental authority for resource activity this section specifies that the annual return must include information on whether there has been a change to the carrying out of the activity that may affect the ERC. This will allow for consistent reporting and tracking of rehabilitation costs.

This section sets a maximum 100 penalty units for non-compliance with the requirement to provide an annual return before the anniversary day for the environmental authority. This penalty is justified since it is the same magnitude as similar provisions in the pre-amendment EP Act that relate to operating without a required management document in place (for example, applying fertiliser while carrying out an agricultural ERA in certain catchments without an Environmental Risk Management Plan (ERMP)). The annual return is likewise a required management document and will also inform the validity of the ERC, which is a requirement for lawful operation under an environmental authority, and therefore this penalty is justified.

316I Particular requirement for annual return if PRCP schedule applies

This section states the specific requirements for annual returns for an activity which a PRCP schedule applies. When a PRCP schedule applies, the annual return must include an evaluation of the effectiveness of the schedule.

This section will allow for a better reporting of the rehabilitation carried out under the PRCP schedule and will provide the administering authority with crucial information for the tracking of rehabilitation at the site.

316J Particular requirement for annual return for CSG environmental authority

This section replaces section 309 of the pre-amendment EP Act. It is an administrative amendment to reflect the numbering of the amended Act under this Bill. The intent remains unchanged.

Division 3 Changing anniversary day

316K Changing anniversary day

This section replaces section 310 of the pre-amendment EP Act. It is an administrative amendment to reflect the numbering of the amended Act under this Bill. The intent remains unchanged.

316L Deciding application

This section replaces section 311 of the pre-amendment EP Act. It is an administrative amendment to reflect the numbering of the amended Act under this Bill. The intent remains unchanged.

316M Notice of decision

This section replaces section 312 of the pre-amendment EP Act. It is an administrative amendment to reflect the numbering of the amended Act under this Bill. The intent remains unchanged.

316N When decision takes effect

This section replaces section 313 of the pre-amendment EP Act. It is an administrative amendment to reflect the numbering of the amended Act under this Bill. The intent remains unchanged and it states when a decision to change the anniversary day takes effect.

Division 4 Non-compliance with eligibility criteria

316O Requirement to replace environmental authority if non-compliance with eligibility criteria

This section replaces section 314 of the pre-amended EP Act. It is an administrative amendment to reflect the numbering of the amended Act under this Bill. The intent remains unchanged.

This section applies if an environmental authority is issued for a standard or variation application under Part 5 and then the relevant activity for the authority does not comply with the eligibility criteria for the activity. It provides the same penalty (4,500 penalty units) for non-compliance as in the pre-amended EP Act.

This offence provision raises the fundamental legislative principle that a penalty should be proportionate to an offence, and that penalties within legislation should be consistent with each other. This penalty is justified as failing to comply with the eligibility criteria is a breach of a condition of the environmental authority and this penalty is the same as the maximum penalty for breaching a condition of the environmental authority.

Division 5 Miscellaneous Provisions

Section 316P Administering authority may seek advice, comment or information about application

This section replaces and is similar to section 315 of the pre-amended EP Act.

This section retains the provision allowing the administering authority to ask any entity for advice, comment or information about an application, however inserts the ability to request the same for a PRC plan accompanying an application made under this chapter. This is necessary because the PRC plan is now part of the environmental authority application.

This section retains the provision that there is no particular way advice, comment or information may be asked for and received, and that the request may be made by public notice.

Section 316Q Decision criteria are not exhaustive

This section replaces section 316 of the pre-amended EP Act. It is an administrative amendment to reflect the numbering of the amended Act under this Bill. The intent remains unchanged.

Amendment of s 318Z (What is progressive certification)

Clause 172 amends section 318Z of the EP Act so that a PRCP schedule is considered by the administering authority when assessing a site for progressive certification.

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

This amendment ensures a PRCP schedule is considered by the administering authority when certifying progressive rehabilitation. This is necessary because the purpose of the PRCP schedule is to identify milestones that reflect progressive rehabilitation. Therefore completion of particular milestones will provide the administering authority with evidence that progressive rehabilitation is occurring on site, and certification can be provided with confidence and evidence.

Amendment of s 318ZB (Continuing responsibility of environmental authority holder relating to certified rehabilitated area)

Clause 173 amends section 318ZB of the EP Act to also relate to PRC plans.

The amendment removes the reference to environmental authorities from the heading because the environmental authority holder is also the holder of a PRCP schedule. Therefore to provide clarity, this section relates to the holder of the two documents.

Currently, this section applies if progressive certification has been given for a relevant tenure. Subsection (2) imposes requirement that the certified rehabilitated must be maintained under the conditions of the relevant environmental authority. This might include monitoring and maintenance to prevent or manage any environmental harm resulting from mining activities in the area to levels stated in the environmental authority. Subsection (2) is amended to include PRCP schedule milestones where they might apply. This is because the obligation will reside in the PRCP schedule rather than the environmental authority.

Subsection (3) ensures that once an area has been certified, new conditions cannot impose a more stringent obligation for the certified area. This subsection is amended to maintain the same intent for PRCP schedules.

Subsection (4) provides for the obligation under (2) to cease when the last of the following has taken place:

- the tenure is surrendered;
- the environmental authority is cancelled or surrendered; or
- a continuing condition of the environmental authority (i.e. a condition which continues to have effect after the environmental authority has ended), has been fulfilled.

This subsection is also amended to include reference to a PRCP schedule.

Amendment of s 318ZD (Requirements for progressive certification application)

Clause 174 amends section 318ZD of the EP Act. This section provides the requirements for an application for progressive certification.

This amendment inserts the requirement for a compliance statement for progressive certification to include a statement that conditions of both the environmental authority and the PRCP schedule have been complied with.

This amendment is necessary to ensure compliance with the PRCP schedule, and to provide comprehensive detail that supports assessing the progressive certification application.

Amendment of s 318ZF (Requirements for progressive rehabilitation report)

Clause 175 amends section 318ZF of the EP Act by replacing subsection (1)(a) with two provisions so that it incorporates a reference to PRCP schedules.

The amendment inserts a requirement that where a PRCP schedule applies, the progressive rehabilitation report must contain the information contained in section 264A for a post-mining management report. This amendment is necessary because a progressive rehabilitation report required for land that is managed under a PRCP schedule would result in duplication in information required. Ensuring the content requirements of a post-mining management report are included in the progressive rehabilitation report removes such duplication.

For land that is not managed under a PRCP schedule, the existing provision still applies in that information required under section 264 for a final rehabilitation report is required for the progressive certification application.

Amendment of s 318ZI (Criteria for decision)

Clause 176 amends section 318ZI of the EP Act to insert a requirement for the administering authority to consider a PRC plan when a PRCP schedule applies for relevant activities to be carried out in the proposed certified rehabilitated area.

This section provides the criteria for deciding whether to give or refuse the progressive certification. Subsection (1) sets out the matters the administering authority must consider. These include relevant regulatory requirements, the standard criteria, the progressive rehabilitation report, the compliance statement, and relevant assessment report, and any other matter prescribed by regulation.

For environmental authorities with a PRCP schedule, the rehabilitation conditions will now be in the schedule. Consequently, this amendment ensures that if the land for progressive certification is subject to a PRCP schedule, that the associated PRC plan, as the critical rehabilitation planning document for the site, must be considered when making a decision to approve or reject rehabilitation.

Amendment of s 318ZJ (Steps after making decision)

Clause 177 amends section 318ZJ of the EP Act. This section sets out the steps the administering authority must follow after making a decision in regard to an application for progressive certification.

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

The amendment retains the requirement to record particulars of the certification in the register for the relevant environmental authority and to provide a written notice of the decision to the holder and ensures that the same applies if there is a PRCP schedule for the certified area.

Insertion of new s 318ZJA

318ZJA Administering authority may amend PRCP schedule

Clause 178 inserts a new section 318ZJA into the EP Act.

This section applies if the administering authority decides to approve progressive certification of land on which a PRCP schedule applies to the certified rehabilitation area.

It allows the administering authority to make an amendment to the PRCP schedule if, because of progressive certification, the amendment is necessary.

This section requires the administering authority to inform the holder of the amendment, and to record the amendment in the relevant register. This provision maintains consistency with other sections of the Bill and maintains transparency. Section 316H may be used if there are associated changes to the PRC plan and the planning part of the document needs to be submitted to the administering authority.

Amendment of s 320A (Application of div 2)

Clause 179 amends section 320A of the EP Act. This section details when the duty to notify of environmental harm applies.

Section 320A is amended to ensure the division applies to a rehabilitation auditor conducting an audit of a PRCP schedule under Chapter 5, Part 12. This insertion is necessary to ensure rehabilitation auditors, as required as part of the PRC plan framework, notify the administering authority if any event on a site to which a PRCP schedule applies, may cause environmental harm.

Insertion of 320A(4)(da) ensures events and activities that cause environmental harm but are approved under a PRCP schedule, are exempt from notification. This amendment also renumbers subsections (da) to (h) as an administrative amendment.

Amendment of s 320B (Duty of particular employees to notify employer)

Clause 180 amends section 320B of the EP Act to insert the provision that this section does not apply to rehabilitation auditors performing functions for an audit of a PRCP schedule, as they are employed as a requirement of the administering authority as an independent person. Subsequently, rehabilitation auditors must report any event to the administering authority, and not to the holder.

Amendment of s 322 (Administering authority may require environmental audit about environmental authority)

Clause 181 amends section 322 of the EP Act to change the heading to include an audit of a PRCP schedule.

This amendment is similar to environmental authority audit processes and powers, and ensures that the administering authority is able to require the holder to conduct an environmental audit if it is necessary and desirable.

Amendment of s 324 (Content of audit notice)

Clause 182 amends section 324 of the EP Act to require the administering authority to state the relevant PRCP schedule subject of the environmental audit.

This amendment maintains consistency with section 322 in ensuring the PRCP schedule is captured in the environmental audit process.

Amendment of s 326 (Administering authority may conduct environmental audit for resource activities)

Clause 183 amends section 326 of the EP Act to allow the administering authority to conduct an audit on a stated matter concerning an environmental authority or a PRCP schedule.

This amendment is necessary to maintain consistency with previous sections of Division 2 and with the environmental authority audit process.

Amendment of s 326A (Administering authority's costs of environmental audit or report)

Clause 184 amends section 326A of the EP Act to insert reference to a holder of a PRCP schedule which has been audited.

This section enables the administering authority to recover any costs it incurs in conducting an environmental audit or preparing an environmental audit report. It requires the holder of the relevant environmental authority to pay the amount of the costs that were properly and reasonably incurred. The administering authority may recover the amount as a debt.

This amendment is necessary as it ensures a holder of a PRCP schedule subject to an audit is subject to the same provisions as those for the holder of an environmental authority that has been audited.

Amendment of s 326H (Action following acceptance of report)

Clause 185 amends section 326H of the EP Act. This section currently outlines the actions the administering authority may take following the acceptance of the environmental report, such as requiring amendment of the environmental authority, requiring submission of transitional environmental program, or taking enforcement action (such as an environmental protection order).

Amendment of 326H(1)(a) is necessary in ensuring a transitional environmental program (TEP) does not apply to activities to which a PRCP schedule applies. A TEP is not considered an appropriate compliance mechanism for PRCP schedules because it is a planning instrument, and non-compliance with a PRCP schedule condition or milestone cannot be addressed through further planning in a different document. It would be more appropriate to ensure all rehabilitation planning is contained within the PRC plan and PRCP schedule through amendments to the plan and schedule.

Section 326H(1)(b) is amended to allow the administering authority to amend conditions of a PRCP schedule. This inclusion is necessary to ensure conditions remain relevant to the activities and milestones in the PRCP schedule, and any additional administering authority requirements or conditions for rehabilitation activities can be inserted into the relevant schedule.

Amendment of s 330 (What is a transitional environmental program)

Clause 186 amends section 330 of the EP Act which currently details the requirements of a transitional environmental program (TEP). A TEP is defined as a specific program that achieves compliance with the EP Act by means of:

- reducing environmental harm;
- detailing the transition of the activity to an environmental standard; and
- detailing the transition of the activity to comply with a particular condition.

Subsection (2) is amended to insert the provision that a TEP must not be used to achieve compliance with a PRCP schedule. This amendment is necessary, because, as in amended section 326H, a planning mechanism cannot be used as a compliance tool against another planning document – the PRCP schedule.

This amendment provides clarity and certainty that a TEP should not be considered as a compliance tool for action against PRCP schedules.

Amendment of s 358 (When order may be issued)

Clause 187 amends section 358 of the EP Act to insert the provision that the administering authority can issue an environmental protection order (EPO) to ensure compliance with a condition of a PRCP schedule.

This section currently identifies a range of documents that an EPO can be used to ensure compliance with, including the general environmental duty; an environmental protection policy; a condition of an environmental authority; an audit notice or a regulation.

This amendment is necessary because an EPO would be an appropriate compliance tool to be used against a condition of a PRCP schedule, and would maintain consistency with compliance tools used for environmental authorities.

Insertion of new ch 8, pt2, div 1A

Clause 188 inserts three new sections into the EP Act.

Division 1A PRC Plans

431A PRCP schedule required for particular environmentally relevant activities

This new section contains the offence provisions for not holding a PRCP schedule. It states that the holder of an environmental authority issued for a site-specific application for mining activities relating to a mining lease must not carry out, or allow the carrying out of, an environmentally relevant activity under the authority unless there is a PRCP schedule for the activity.

Failure to comply with this requirement is an offence, subject to a maximum penalty of 4,500 penalty units.

This offence provision raises the fundamental legislative principles that a penalty should be proportionate to an offence, and that penalties within legislation should be consistent with each other. These penalty units have been based on the maximum penalty units for breaching a condition of the environmental authority. As the requirements to carry out rehabilitation used to be a condition of the environmental authority, the penalty unit is justified as it maintains status quo.

431B Contravention of condition of PRCP schedule

New section 431B makes it an offence for the holder, or a person acting under a PRCP schedule to wilfully contravene the PRCP schedule or a condition of the schedule.

A wilful contravention of the PRCP schedule or a condition of the schedule is subject to a maximum penalty of 6,250 penalty units or 5 years imprisonment. A contravention of the PRCP schedule or a condition of the schedule is subject to a maximum penalty of 4,500 penalty units.

These offence provisions raise the fundamental legislative principles that a penalty should be proportionate to an offence, and that penalties within legislation should be consistent with each other. These penalties are justified as they are based on a contravention of conditions of the environmental authority, wilful or otherwise, and these penalties are the same as the maximum penalties for the wilful and non-wilful contravention of a condition of the environmental authority set forth in s430(2) and 430(3) respectively of the pre-amendment Act.

431C Holder of PRCP schedule responsible for ensuring conditions of PRCP schedule complied with

The new section 431C mirrors the existing section 431 of the EP Act by requiring the holder of a PRCP schedule to ensure that everyone acting under the schedule complies with its conditions.

If a person acting under the schedule commits an offence under section 431C (i.e. a contravention of a condition of the schedule), the holder of the PRCP schedule is guilty of an offence, unless it can be shown that they took all reasonable steps to ensure compliance with the conditions, were not aware of the contravention and could not by the exercise of reasonable diligence have prevented the contravention. This section ensures that all persons who hold a PRCP schedule can be held responsible for a breach of the conditions of the schedule unless they took reasonable steps (as described in subsection (4)) to ensure that the conditions were complied with.

While reproduction of this section raises whether the legislation has sufficient regard to the rights and liberties of individuals, the provision is justified because the matters to be proven for the defence are within the particular knowledge of the PRCP schedule holder. This provides for administrative efficiency in the process.

Amendment of s 452 (Entry of place—general)

Clause 189 amends section 452 of the EP Act so that an authorised person has the ability to enter a place if it is a place to which a PRCP schedule relates, under section 452(1)(d) and (2)(a).

The intent of this amendment is to clarify that the existing authority to enter a place to which an environmental authority relates should be extended to a place to which a PRCP schedule relates.

This provision raises the fundamental legislative principle of the limited power to enter premises. However, given that this provision already applied to environmental authorities, the amendment only ensures that it may be used for requirements that have been moved, or are now in a PRCP schedule. This is justified as it is consistent with the existing authority to enter a place to which an environmental authority relates, only in limited circumstances after meeting strict pre-requisites.

Amendment of s 458 (Order to enter land to conduct investigation or conduct work)

Clause 190 amends section 458 of the EP Act to include references to PRCP schedules. The intent of this amendment is to ensure that an authorised person may also apply to a magistrate for an order to enter land to carry out work on the land to secure compliance with a PRCP schedule.

Amendment of s 493A (When environmental harm or related acts are unlawful)

Clause 191 amends section 493A of the EP Act to clarify that a relevant act is unlawful unless it is authorised to be done under a PRCP schedule as well as an environmental authority.

This amendment is required because carrying out rehabilitation could cause environmental harm (e.g. release dust). However, as it is a requirement of the PRCP schedule to conduct the activity, it is not unlawful environmental harm.

Amendment of s 520 (Dissatisfied person)

Clause 192 amends section 520 of the EP Act to include definitions of a dissatisfied person in relation to PRCP schedules. This allows for reviews and appeals of decisions in regards to PRCP schedules.

Replacement of s 522B (Stay of decision to issue environmental protection order)

Clause 193 omits section 522B and replaces it with a new section 522B. It also inserts a new section 522C.

522B Stay of particular decisions if unacceptable risk of environmental harm

New section 522B of the EP Act indicates that the Land Court or the Court must refuse an application for a stay if there would be an unacceptable risk of serious or material environmental harm if the stay were granted. This section applies to an application under section 522 for a stay of decision to ask the scheme manager for a payment of costs and expenses (s316F), to make a claim on or realise an EPA assurance (s316F), or to issue an environmental protection order (s358).

This amendment provides the court with the additional power to refuse an application for a stay if satisfied there would be an unacceptable risk of serious or material environmental harm if the stay were granted.

This amendment is required because in the event that the administering authority is making the claim to prevent the risk of environmental harm on a site, a stay of the decision would delay the ability of the department to obtain the funds when they are most needed. Therefore, it is considered appropriate to limit stays in instances where the Court decides there is an unacceptable risk of serious or material environmental harm.

522C Effect of stay of ERC decision

New section 522C applies if an ERC decision is stayed, and confirms that in that instance, the ERC decision remains in effect for purposes of section 297 (requirement to have an ERC decision in force otherwise the holder cannot carry out the activity). This will ensure that any decision by the court to stay an ERC decision does not result in an operator needing to suspend their operation.

However, consistent with the current provision for financial assurance, a holder of an environmental authority who is required to give surety under the *Mineral and Energy Resources (Financial Provisioning) Act 2017* is only required, during the period of the stay to give a surety of 75% of the amount required. This requirement ensures that where an ERC decision is stayed, the State still holds sufficient funds to cover costs and expenses in the event the administering authority decides to ask the scheme manager for a payment under proposed section 316C of the EP Act.

For an authority requiring the payment of a contribution to the scheme fund, there is no similar reduction in the amount of contribution payable because the amount of the contribution is an annual payment only and is not a payment equivalent to the ERC amount.

Amendment of s 523 (Review decisions subject to Land Court appeal)

Clause 194 amends section 523 of the EP Act to change when this subdivision applies from when "if the administering authority makes an original decision mentioned in schedule 2, part 1" to "if the administering authority makes a review decision for an original decision mentioned in schedule 2, part 1." This is to update the terminology to reflect a more accurate description of the type of decision being referred to in this section.

Amendment of s 524 (Right of appeal)

Clause 195 amends section 524 of the EP Act to refer to the review decision, rather than simply a decision. This is to update the terminology to reflect a more accurate description of the type of decision being referred to in this section.

Amendment of s 525 (Appeal period)

Clause 196 amends section 525 of the EP Act to refer to the review decision, rather than simply a decision. This is to update the terminology to reflect a more accurate description of the type of decision being referred to in this section.

Insertion of new s 529

529 Effect of stay on particular decisions

Clause 197 inserts a new section 529 which, clarifies that if an ERC decision is stayed in the Land Court appeal process, that decision remains in force for section 297 (requirement to have an ERC decision in force otherwise the holder cannot carry out the activity). This will ensure that any decision by the court to stay an ERC decision does not result in an operator needing to suspend their operation.

Amendment of s 530 (Decision for appeals)

Clause 198 amends section 530 of the EP Act to refer to the review decision, rather than simply a decision. This is to update the terminology to reflect a more accurate description of the type of decision being referred to in this section.

Amendment of s 540 (Registers to be kept by administering authority)

Clause 199 amends section 540 of the EP Act to include registers to be kept by the administering authority for PRC Plans, audit reports of PRCP schedules, and ERC decisions for environmental authorities.

The intent of this amendment is to maintain transparency and to ensure consistency with existing provisions relating to environmental authorities, which are already kept on a register by the administering authority. This amendment ensures that PRCP schedules and ERC decisions for environmental authorities are kept on the public register.

The amendment to section 540(1)(aa) clarifies that environmental authority application documents include application documents for amendment applications. This is a clarification of the policy intent for this section.

Insertion of new s 550

550 Chief executive may make guidelines for particular matters under ch 5

Clause 200 inserts a new section 550 into the EP Act to enable the chief executive to make guidelines about the range of matters specified including PRC plan content requirements, PRCP schedule audit requirements, ERC decisions and financial assurance decisions.

Improving the guidance regarding specific requirements of Chapter 5 will allow for more clarity and consistency for both government and industry.

Insertion of new ch 13, pt 27

Clause 201 inserts a new part 27 into Chapter 13 of the EP Act, which contains the transitional provisions for this Bill.

Part 27 Transitional provisions for Mineral and Energy Resources (Financial Provisioning) Act 2017

750 Definitions for part

This section includes new definitions for the transitional provisions in the new Part 27 of the EP Act. The transitional provisions apply to existing environmental authorities to transition into the new PRC plan and ERC frameworks.

This clause adds definitions for:

- Act as amended
- amending Act
- mining EA applicant
- mining EA holder
- pre-amended Act

These definitions are necessary to ensure that existing environmental authorities, and applications for environmental authorities are transitioned.

751 Existing applications for environmental authorities for mining activities relating to a mining lease

This section states the transitional arrangements for applicants for environmental authorities for mining activities. This provision makes it clear that, for those who have made a site-specific application for a mining activity relating to a mining lease under the pre-amended Act (chapter 5, part 2), the pre-amended Act continues to apply to their application.

If the environmental authority is issued after commencement under the pre-amended Act (section 195), the Act as amended applies from the day that the authority is issued under that section. This includes the mandatory condition to have an ERC decision under the new section 297.

The provision makes it clear that section 431A (obligation to have an approved PRCP schedule) does not apply until either the applicant fails to comply with a notice given under section 754, or the day a PRCP schedule is approved, whichever is earlier.

The effect of this provision is to clarify that ongoing applications continue to be considered under the pre-amended version of the Act. Once the environmental authority is issued, however, then the Act as amended applies to that authority going forward. The delay of the obligation to have an approved PRCP schedule is to ensure that the environmental authority

holder is not subject to potential penalties until they have submitted a PRC plan for approval under section 754.

752 Existing plans of operations for petroleum leases

This section ensures that existing plans of operations for an environmental authority for petroleum activities relating to a petroleum lease given to the administering authority before the commencement of this Bill continue under section 291 after commencement of this Bill.

The effect of this provision is to confirm that these amendments to the Act do not impact plans of operations for petroleum activities relating to petroleum leases.

753 Existing plans of operations for mining lease

This section outlines the transitional provisions for existing plans of operations for a mining lease under the pre-amended Act on commencement. For those falling under this section, the pre-amended Act continues to apply in relation to the holder and plan of operations until either the day the plan of operations expires, or the day a PRCP schedule is approved for the holder's mining lease, whichever is earlier.

This provision also ensures section 431A (obligation to have an approved PRCP schedule) does not apply until either the applicant fails to comply with a notice given under section 754, or the day a PRCP schedule is approved, whichever is earlier.

The effect of this provision is to clarify that plans of operations will be phased out for mining operations with minimum administrative burden for both industry and government.

754 Administering authority must give notice requiring holder to apply for PRC plan

This section requires the administering authority to give each environmental authority holder for a mining lease that was approved under a site-specific application a notice stating that the holder must submit a proposed PRC plan that complies with the new sections 126C and 126D. The notice must specify the date by which the plan must be submitted, it is expected that the timeframe will range between 6 months and 12 months depending on the complexity of the site and current environmental authority.

All notices must be given to existing environmental authority holders within 3 years of the commencement of this Bill. It is expected that the department will be developing a list to inform the sequence of sites to be transitioned.

The effect of this provision is to ensure that all relevant environmental authority holders have begun to transition to the new PRC plan requirement within 3 years of the commencement.

755 Administering authority must assess proposed PRC plan

This section requires the administering authority to assess a PRC plan that is submitted for existing sites transitioning in compliance with a notice given under new section 754.

The section states that in assessing the PRC plan, chapter 5, parts 2 to 5 of the amended Act will apply. This means the PRC plan will go through the application, information, notification and decision stages as if it accompanied an environmental authority. The timeframes for the assessment are the shorter of the timeframes in sections 144(a)(ii), 168(1)(b) and 194(2)(a)(ii) or (b)(ii). This is because the administering authority will be considering only the PRC plan, and therefore the shorter timeframes are more appropriate to encourage efficient decision-making. The longer decision-making timeframes have been added for instances where the administering authority is considering both an environmental authority and a proposed PRC plan at the same time.

In preparing a PRC plan, the applicant will be required to translate existing rehabilitation commitments from their environmental authority and/or plan of operations into the new PRC plan format. This entails identifying the milestones which will achieve post-mining land uses or the management of non-use management areas otherwise meeting the content requirement of PRC plans under section 126C. This may include a re-design of the existing rehabilitation requirements and the applicant will have the opportunity to propose different outcomes if they still meet the requirements for a PRC plan in sections 126C and 126D.

For example, if a mining operation has an approved watercourse diversion and that diversion has established a stable, non-polluting and self-sustaining ecosystem over the years, re-diverting the river to its original design might have a greater environmental impact than leaving the established diversion. In this scenario the diversion may become a proposed post-mining land use and any condition to re-instate the river would be removed from the environmental authority, but would not be imposed on the PRCP schedule (although the schedule would contain the milestones relating to the diversion and how it will be managed going forward to achieve a post-mining land use). The area where the river was supposed to be re-diverted to would also need to be addressed in the PRC plan as a post-mining land use or non-use management area, having regard to sections 126C and 126D.

This section also gives the administering authority the ability to exempt a proposed PRC plan from a requirement to provide the evidence to justify a non-use management area (under section 126C(1)(g) or (h)) if the administering authority considers:

- the matter is already addressed in the holder's environmental authority;
- the matter is already addressed in a plan of operations given by the holder to the administering authority; or
- a written agreement between the holder and the administering authority addresses the non-use management area.

This exemption is designed to ensure that where a non-use management area has been agreed to in the environmental authority, plan of operations or otherwise in agreement with the administering authority, then there is no expectation to change previously authorised areas.

The section also qualifies that the notification stage in part 4 does not apply if:

- an EIS for the activities has been completed or a proposed post-mining land use for the land is stated in the environmental authority or plan of operations; and
- since the EIS process was completed or environmental authority was issued, a post-mining land use or non-use management area for the land has not changed.

For example, public notification for an existing site will not be required where the rehabilitation outcomes proposed in the PRC plan are the same as those approved in the environmental authority. However, public notification will be required if, for example, in the environmental authority the post-mining land use for an area was approved as forestry, but in the PRC plan the post-mining land use for the same area is being proposed as grazing.

In considering the PRC plan, this section requires that the administering authority have regard to the holder's environmental authority that relates to the PRC plan, and any other matters the administering authority would have had regard to if the environmental authority and PRC plan were considered together.

756 Administering authority may amend environmental authority

This sections states that the administering authority may amend a relevant environmental authority upon approval of the PRCP schedule to the extent necessary to remove matters about rehabilitation that are now dealt with in the schedule. This section also allows the administering authority to make any other clerical or formal changes necessary, as a result of the approval of the PRCP schedule.

If the administering authority amends an environmental authority under this section, it must give the environmental authority holder written notice of the amendment, issue the amended environmental authority and include the amended environmental authority in the relevant register.

The effect of this provision is to enable the administering authority to amend an environmental authority to remove the rehabilitation conditions that have since been moved to the approved PRCP schedule. This will remove any duplication and ensure there is no doubt of where a requirement sits.

757 Applications for decision about amount and form of financial assurance

This section applies in relation to holders of mining environmental authorities who, before commencement were required under a condition of their authority (under the pre-amended Act section 292) to give financial assurance.

The section clarifies that if the holder applied under the pre-amended act, then that act will be used to decide the application. If the holder had not applied for a decision under pre-amended Act, then the holder must apply for an ERC decision under the amended legislation. This section clarifies that section 297 (requirement to have an ERC decision in force) applies from commencement.

758 When existing condition requiring financial assurance ends

This section outlines the transitional provisions for holders of an environmental authority that is in force at the time of commencement of the amended Act, and upon which the administering authority has imposed a condition requiring financial assurance.

The section states that after commencement, the condition no longer has effect once an ERC decision has been made. It also grants the administering authority the ability to amend the

environmental authority to remove the condition and issue an amended authority to the holder.

759 Claiming on or realising financial assurance started before the commencement

This section addresses the transitional arrangements for holders of an environmental authority who, before commencement, received a written notice from the administering authority to claim or realise financial assurance under the pre-amended section 299, and who have not been notified of a decision at the time of commencement.

The section clarifies that if the financial assurance was given for an environmental authority for a prescribed ERA, the pre-amended Act (chapter 5, part 12, division 2, subdivision 3) continues to apply.

If the financial assurance was given for a small scale mining activity or an environmental authority for a resource activity, the amended Act (chapter 5, part 14, division 2) applies as if:

- a notice was given under section 316E; and
- a written representation about the notice given by the entity before the commencement were a representation given under section 316E; and
- the financial assurance were a scheme assurance.

The effect of this section is to clarify that those who gave financial assurance for an environmental authority for a prescribed ERA will continue to fall under the provisions of the pre-amended Act, whereas those who gave financial assurance for small scale or resource activities will be covered by the Act as amended.

The reason for this distinction is that for holders of prescribed ERAs, the administering authority will continue to hold the financial assurance for them, and the pre-amended procedures can continue to apply.

However, under the new section 763, the administering authority will transfer all financial assurance funds relating to small scale mining activities and resource activities on commencement of the amended Act. Therefore, if a decision had not been made regarding claiming or realising financial assurance for a small scale mining activity or resource activity prior to commencement, the funds will now be held by the scheme manager and the new process for claiming or realising financial assurance will need to be followed. This section allows for the amended process to be followed.

760 Existing applications to amend or discharge financial assurance

This section addresses the transitional arrangements for holders of an environmental authority who applied before commencement to amend or discharge financial assurance under the pre-amended Act section 302 and whose application has not been decided at the time of commencement. The section states that the pre-amended Act continues to apply under these circumstances.

761 ERC decisions for environmental authorities for resource activities

This section ensures that all EA holders will have an ERC decision in force on commencement by deeming the amount of financial assurance decided to be the ERC and allocating an ERC period for each.

This section states that on commencement an ERC decision is taken to be in force, and the ERC under the decision is taken to be the amount of the financial assurance for the environmental authority.

This section also transitions all environmental authorities to having an ERC period:

- if the resource activity relates to a mining lease or petroleum lease, it ends on the day when the holder's plan of operations, continued under section 752 or 753 expires;
- if the resource activity relates to a 1923 Act petroleum tenure granted under the Petroleum Act 1923, the day that is 3 years after the commencement; or
- in all other cases, the day all resource activities carried out under the environmental authority have ended.

762 Application of s 21A of amended Act

This section applies to small scale mining activities that started before commencement, and on commencement of this Bill are still being carried out. It states that on commencement, the amended prescribed condition stated in section 21A applies to the small scale mining tenure.

The effect of this section is to make it clear that the amended section 21A applies to existing small scale mining activities, requiring the small scale mining tenure holder to pay a surety to the scheme manager.

763 Transfer of funds

This section requires the administering authority to transfer all EPA assurances for resource activities in both cash and other forms to the scheme manager on commencement.

764 Transitional regulation-making power

This section allows a transitional regulation to be made for any matter for which it is necessary to make provision to allow for or to facilitate the doing of anything to achieve the transition from the pre-amended Act to the Act as amendment, and for anything in the amended Act that is not sufficiently provided for. The transitional regulation may have retrospective operation to a day that is not earlier than the commencement. This section also states that chapter 13, part 27 and the transitional regulation-making power expires 2 years after the commencement.

Amendment of sch 2 (Original decisions)

Clause 202 amends schedule 2, part 1, division 3 of the EP Act. This amendment ensures that new, or replaced decisions are listed in schedule 2 as original decisions. The amendment ensures appeal and review processes can be made on original decisions. Additions include PRCP schedule decisions, ERC decisions and decision to claim or realise EPA assurance or

ask for a payment under the *Mineral and Energy Resource (Financial Provisioning) Act 2017*.

The remainder of the changes to this section are to ensure consistency, incorporate references to PRC plans and schedules where needed and to administratively amend the numbering to accommodate these necessary changes.

Amendment of sch 4 (Dictionary)

Clause 203 amends the Dictionary of the EP Act to delete, replace, amend and insert definitions as a result of changes in this Bill.

The following definitions are being omitted:

- annual notice
- conditions
- on-site mitigation measure
- plan of operations
- relevant lease
- statement of compliance

The following definitions are being inserted:

- audit period
- audit report
- conditions
- environmental record
- EPA assurance
- ERC decision
- ERC period
- estimated rehabilitation cost
- financial assurance guideline
- management milestone
- minor amendment (PRCP threshold)
- minor amendment (threshold)
- new day
- non-use management area
- plan of operations
- plan period
- post-mining land use
- PRC Plan
- PRCP schedule
- rehabilitation auditor
- rehabilitation milestone
- rehabilitation planning part
- scheme assurance
- scheme fund

- scheme manager
- stable condition
- statement of compliance

The following definitions are being amended, replaced or moved to the Dictionary from other parts of the EP Act:

- amendment application
- anniversary day
- application documents
- assessment process
- environmental authority
- environmental offence
- environmental requirement
- financial assurance
- holder
- ineligible ERA
- major amendment
- minor amendment
- objector
- proposed amendment
- regulatory requirement
- relevant activity
- relevant mining activity
- relevant mining lease
- relevant mining tenure
- relevant resource activity
- relevant tenure
- submitter

The definition of *environmental requirement* has been amended to include reference to PRCP schedules in the definition of an environmental requirement. The purpose of this amendment is to ensure that the actions that are able to be taken for environmental requirements are able to be taken in relation to PRCP schedules. This will include offences relating to environmental requirements as per Chapter 8, Part 2 and entry to land to comply with environmental requirements as per Chapter 12, Part 4 of the EP Act.

The definition of *holder* has been amended to include reference to PRC plans and schedules so that it ensures the holder of the tenure continues to be the holder of the environmental authority, and where a PRC plan applies, is also the holder of the plan. In addition, to ensure that the holder of the environmental authority and the PRCP schedule are the same, item 4A has been amended to clarify that if a resource tenure ends for either an environmental authority or a PRCP schedule, that the person who was the holder of the tenure immediately before it ended continues to be the holder of either the environmental authority or the PRCP schedule at issue.

The definition of *regulatory requirement* has also been amended to reference PRC plans and schedules. This amendment was necessary to make it clear that the administering authority has the ability to consider the regulatory requirements to make a decision on a proposed PRCP schedule.

Division 3 Amendment of Mineral and Energy Resources (Common Provisions) Act 2014

Act amended

Clause 204 provides that Division 3 amends this Act.

Insertion of new s 20A

Clause 205 inserts a new section 20A into the *Mineral and Energy Resources (Common Provisions) Act 2014*.

This section applies if the Minister approves a prescribed dealing that is:

- a transfer of a resource authority as mentioned in clauses 32(1)(c)(i) or 33(1)(c)(i) of the *Mineral and Energy Resources (Financial Provisioning) Act 2017*;
- transfer of a resource authority authorising a resource activity for an environmental authority with an ERC amount less than the prescribed ERC amount; or
- a transfer of a small scale mining tenure,

where a contribution to the scheme fund is required to be paid or a surety required to be given for the authority or tenure under the *Mineral and Energy Resources (Financial Provisioning) Act 2017*.

The prescribed dealing must not be registered under the *Mineral and Energy Resources (Common Provisions) Act 2014* unless the entity that will be the holder of a resource authority on registration of the dealing has paid the required contribution or given the required surety.

Division 4 Amendment of Mineral Resources Act 1989

Act Amended

Clause 206 states that this Act amends the *Mineral Resources Act 1989*. The amendments are consequential amendments required as a result of amendments to the EP Act made by this Bill.

Amendment of s 123 (Property remaining on former mining claim may be sold etc.)

Clause 207 amends section 123 of *Mineral Resources Act 1989* to update the reference to the amended EP Act. Section 123 previously referred to section 298 of the EP Act which has been replaced with section 316C. This amendment ensures that the references to the EP Act in the *Mineral Resources Act 1989* reflect the amendments in this Bill and the associated re-numbering.

Amendment of s 230 (Plan remaining on former mineral development licence may be sold etc.)

Clause 208 amends section 230 of *Mineral Resources Act 1989* to update the reference to the amended EP Act. Section 230 previously referred to section 298 of the EP Act which has been replaced with section 316C. This amendment ensures that the references to the EP Act in the *Mineral Resources Act 1989* reflect the amendments in this Bill and the associated re-numbering.

Amendment of s 298 (Mining other minerals or use for other purposes)

Clause 209 amends the note in section 298(10) of *Mineral Resources Act 1989* to update the reference to the amended part 13 (Plan of Operations) of the EP Act. This amendment is necessary to ensure that the references to the EP Act in the *Mineral Resources Act 1989* reflect the amendments in this Bill and the associated re-numbering.

Amendment of s 314 (Property remaining on former mining lease may be sold)

Clause 210 amends section 314 *Mineral Resources Act 1989* to update the reference to the amended EP Act. Section 314 previously referred to section 298 of the EP Act which has been replaced with section 316C. This amendment ensures that the references to the EP Act in the *Mineral Resources Act 1989* reflect the amendments in this Bill and the associated re-numbering.

Amendment of s 344 (Definition for pt 4)

Clause 211 amends section 344 of *Mineral Resources Act 1989* to include reference to a PRCP schedule as part of the definition of a final rehabilitation site. This amendment ensures the PRCP schedule is captured because for mining leases, rehabilitation requirements will be moved to PRCP schedules under the new PRC plan framework.

Amendment of s 344A (Authorised person to carry out rehabilitation activities)

Clause 212 amends section 344A of the *Mineral Resources Act 1989* to allow the chief executive to authorise the holder of an environmental authority or PRCP schedule that is in force for the land to enter the land, or part of the land, to carry out activities (also rehabilitation activities). This amendment is required because rehabilitation requirements will be moved to PRCP schedules under the PRC plan framework.

Amendment of sch 2 (Dictionary)

Clause 213 amends schedule 2 of the *Mineral Resources Act 1989* to include a definition of PRCP schedule. This amendment is required to support amendments to section 344 and 344A of the *Mineral Resources Act 1989*.

Division 5 Amendment of Right to Information Act 2009

Clause 214 states that Division 5 amends the *Right to Information Act 2009* (Right to Information Act). The Act includes an amendment to the Right to Information by inclusion of

an exemption to Schedule 1 (Documents to which this Act does not apply) and Schedule 2 Part 2 (Entities to which this Act does not apply). The exemptions cover documents created or received under part 3 of the Act and the scheme manager as an entity to which the Right to Information Act does not apply.

The exemptions respond to significant concerns raised by industry stakeholders about the potential for disclosure of sensitive financial and business information and documents which would ordinarily only be provided to financial institutions for obtaining financial assurance under the current arrangements under the EP Act. These exemptions will allay holders' concerns that their confidential corporate and financial documents (including potentially details of their joint venture arrangements) provided to the scheme manager could otherwise be publicly available.

Amendment of sch 1 (Documents to which this Act does not apply)

Clause 215 includes an amendment to the Right to Information by inclusion of an exemption to Schedule 1. The documents described in this exemption remain exempt whether in the possession or control of the scheme manager or any other agency under the Right to Information Act.

Amendment of sch 2 (Entities to which this Act does not apply)

Clause 216 includes an amendment to the Right to Information Act by including an exemption to Schedule 2 part 2 to include the scheme manager in relation to the scheme manager's functions under the Act. For the reasons noted above, it is considered appropriate to exempt the scheme manager from the application of the Right to Information Act.

Schedule 1 Dictionary

Schedule 1 inserts a Dictionary of the terms used in the Bill.

In particular, the dictionary defines the following:

Prescribed ERC amount

The prescribed ERC amount is defined as $100,000 or another amount as prescribed by regulation. The prescribed ERC amount sets the entry point into the scheme for a risk category allocation assessment of an authority. Where the ERC is less than the prescribed amount, a risk category allocation assessment is not required and the holder is required to pay a surety in the amount of the ERC (rather than paying a contribution to the scheme fund). This is considered reasonable as the benefits accruing from the risk allocation assessment need to be balanced against the cost to both the industry and the scheme of undertaking the process. With the continuing maturity of the scheme fund with each year, supported by outcomes of the actuarial investigation under clause 73, the prescribed ERC amount may need to be adjusted. On this basis this regulation-making provision is justified and not a breach of a FLP.

Prescribed Percentage

The prescribed percentage is defined as the percentage contribution rate prescribed for each of the very low, low and moderate risk categories resulting from a scheme manager's risk category allocation assessment of an authority. The prescribed percentage is part of the formula for calculating the contribution payable under clauses 47 and 49. This percentage may vary according to the actuarial investigation under clause 73. The ability to set the prescribed percentage by regulation is necessary to allow for responsive changes to be made to the formula to ensure the financial viability of the scheme fund. On this basis this regulation-making provision is justified and not a breach of a FLP.