Regional Planning Interests Bill 2013

Explanatory Notes for amendments to be moved during Consideration in Detail by The Honourable Deputy Premier and Minister for State Development, Infrastructure and Planning

Title of the Bill

Regional Planning Interests Bill 2013.

Objectives of the Amendments

The amendments to the *Regional Planning Interests Bill 2013* (the Bill) will clarify and improve the operation of the Bill and have mostly been made in response to the recommendations of the State Development, Infrastructure and Industry Committee and feedback from stakeholders.

Achievement of the Objectives

The objectives are achieved by way of amendments to the Bill as described in the notes on provisions.

Alternative Ways of Achieving Policy Objectives

Legislative amendments are the only means of achieving the policy objectives.

Estimated Cost for Government Implementation

The Bill will effectively incorporate other pieces of state legislation that will be repealed upon commencement of the Bill. It will further provide a mechanism to integrate other state legislation in the future.

Some financial implications may be incurred by the Queensland Government through the implementation of the Bill with assessment and administration costs being incurred in the processing and assessment of applications made under the Bill and regional interests authority. These costs will be funded through application fees under a user pays cost recovery model.

Consistency with Fundamental Legislative Principles

Amendment 95, which inserts new clause 97A, enables the Act to be amended by a regulation. The inclusion of this new clause is necessary to provide a transitional regulation making power for any circumstance where a transitional provision is required to protect rights acquired under existing legislation and is not appropriately reflected in the Act. The activities dealt with under the Act are complex and the extent of existing rights cannot be fully appreciated until the legislation commences. The clause provides that this power will expire one year after commencement and therefore the potential breach of the fundamental legislative principle is short term.

Other amendments, including amendment 23 remove the previous breaches of this fundamental legislative principle which enabled the Act to be amended by a regulation through the prescription of CMA tenures provided for in clause 24 of the Bill.

Other potential breaches of fundamental legislative principles, including that legislation should have regard to the rights and liberties of individuals remain justified. The high penalties provided in the Bill are necessary to ensure that significant, and possible irreparable, damage is not done to an area of regional interests.

Consultation

The amendments to the Bill are mostly made in response to Report No. 35 from the State Development, Infrastructure and Industry Committee as well as to submissions made to the Committee during the submission period and the supplementary submission period on the Bill.

The amendments have been prepared in consultation with:

- agricultural sector representatives
- resource sector representatives
- Local Government Association of Queensland (LGAQ)

NOTES ON PROVISIONS

Amendment 1

Amends clause 3, subclause 2 to provide for the assessment and management of impacts from proposed regulated activities (in addition to resource activities) on areas of regional interests.

Amendment 2

Amends clause 7 to omit reference to 'a strategic cropping area' and insert reference to 'the strategic cropping area' to be consistent with amendment 6.

This amendment clarifies that there is only one strategic cropping area for Queensland that is made up of many small parts.

Amendment 3, 4 and 5

Amends clause 8 to clarify what constitutes a priority agricultural area.

The clause as amended provides that a priority agricultural area is an area of regional interest because it contains 1 or more areas used for a priority agricultural land use. A priority agricultural area may also include 1 or more regionally significant water sources.

Each regionally significant water source will be prescribed in the regulation to the Bill.

The purpose of this amendment is to clarify that for a water source to be recognised as a regionally significant water source and an attribute of a priority agricultural area, it must be essential for the ongoing preservation of priority agricultural land uses within a priority agricultural area.

Amendment 6

Amends clause 10 to clarify that there is only one strategic cropping area for the state, which is comprised of the areas shown on the SCL trigger map and that strategic cropping land means land that is, or is likely to be, highly suitable for cropping because of the combination of the land's soil, climate and landscape features.

The amendment removes reference to potential strategic cropping land used under the Strategic Cropping Land Act 2011.

Under the Bill, the meaning of potential strategic cropping land is included in the new definition for strategic cropping land.

Amendment 7 and 8

Amends clause 11 to omit reference to 'environmental value' which is a term used in the *Environmental Protection Act 1994*, and insert 'environmental attribute'.

Subclause 2 clarifies that an environmental attribute for a strategic environmental area may be identified under a regional plan or regulation.

This amendment removes any potential for confusion between the meaning of environmental value under the *Environmental Protection Act 1994* and what is meant under the Bill.

In response to submissions received on the Bill this amendment references the Steve Irwin Wildlife Reserve on Cape York Peninsula as an example of a strategic environmental area.

The example of the 'channel rivers of western Queensland' has been amended to read the 'channel country of western Queensland' for consistency with other government policies. The two other examples in clause 11 have been deleted as these are examples of environmental attributes as opposed to environmental areas.

Amendment 9

Amends clause 13 to:

- omit some resource authorities from requiring a regional interests development approval under the Act
- include resource activities authorised under Special Agreement Acts.

The provisions of the Bill are not relevant for the following resource authorities and the activities authorised under them:

- A prospecting permit under the *Mineral Resources Act 1989*
- A petroleum survey licence under the *Petroleum and Gas (Production and Safety) Act 2004*
- A data acquisition authority authorised under the *Petroleum and Gas (Production and Safety) Act 2004* and the *Greenhouse Gas Storage Act 2009*.
- A water monitoring authority under the *Petroleum and Gas (Production and Safety) Act 2004*.

The nature of activities authorised under these resource authorities are unlikely to impact on an area of regional interest.

A prospecting permit entitles the holder to prospect for and/or hand-mine minerals (excluding coal) and/or peg a mining lease or mining claim on the land specified. A parcel prospecting permit can be granted for a particular parcel for three months and a district prospecting permit can be granted for available land within a mining district for a term of one to 12 months.

A petroleum survey licence is granted to allow the holder to investigate, survey and identify a route for a pipeline, the likely site for a petroleum facility and/or access routes for a pipeline or petroleum facility. The holder of a petroleum survey licence cannot carrying out any activity that involves excavating or clearing, constructing or placing a building, structure or other thing (other than a fence or gate) or disposing of, or storing, garbage or a poisonous, toxic or hazardous substance. A petroleum survey licence may be granted for up to a maximum of 12 months.

A data acquisition authority is required for geophysical surveys to acquire data relevant to authorised activities for other resource authorities. The maximum term for a data acquisition authority is one year.

A water monitoring authority authorises access to assess 'make good obligations' related to water use.

A Special Agreement Act means any of the following Acts and any agreement or lease under or mentioned in the Act. These Acts have been included in the definition of resource authorities as activities under these Acts may have an impact on an area of regional interest.

1. *Alcan Queensland Pty. Limited Agreement Act 1965*; (in Cape York RP area, SEA)
2. *Central Queensland Coal Associates Agreement Act 1968*; (a portion of the area covered by the Act is in CQ RP area, but does not impact a PAA. The Act has been updated to January 2012 and includes the act amendments in 3, 4, 5 below)
3. *Central Queensland Coal Associates Agreement and Queensland Coal Trust Act 1984* (not in Regional Plan areas – Norwich Park coal mine)
4. *Central Queensland Coal Associates Agreement (Amendment) Act 1986* (not in Regional Plan areas – Goonyella coal mine)
5. *Central Queensland Coal Associates Agreement Amendment Act 1989*; (not in Regional Plan areas – Saraji coal mine)
6. *Commonwealth Aluminium Corporation Pty. Limited Agreement Act 1957*; (in Cape York RP area, SEA)
7. *Mount Isa Mines Limited Agreement Act 1985*; (not in Regional Plan areas – Mt Isa area)
8. *Queensland Nickel Agreement Act 1970*; (not in Regional Plan areas – Townsville area)
9. *Queensland Nickel Agreement Act 1988*; (not in Regional Plan areas – Townsville area)
10. *Thiess Peabody Coal Pty. Ltd. Agreement Act 1962*; (in CQRP, PAA and PLA - Moura area)
11. *Thiess Peabody Mitsui Coal Pty. Ltd. Agreements Act 1965*. (coal railway from Moura mines to Port of Gladstone)

Amendment 10 and 11

Amends the heading of Part 1, Division 3, Subdivision 4 to read 'other definitions' and inserts new clause 15A which defines a regional interests development approval. Reference to a regional interests development approval replaces any reference to 'regional interests authority' in the Bill.

The amended clause provides that a regional interests development approval is an approval issued under section 54 that approves the carrying out of a resource activity or regulated activity in an area of regional interests following an assessment of the extent of the expected impact of the activity on the area. A regional interests development approval includes any regional interest conditions of the approval.

This amendment is one of a number of amendments that deal with the same issue, being the omission of the term 'regional interests authority' and insertion of 'regional interests development approval'.

Amendment 12

Amends clause 16 to give effect to Committee Recommendation 3.

The amended clause provides that in this Act, a regulated activity is an activity that has a 'widespread and irreversible' impact on an area of regional interest.

It further provides that a reference to a regulated activity includes a reference to the carrying out of the activity.

Amendment 13and 14

Amends clause 17 as consequential amendments of amendment 6 and 11. The amendments:

- omit reference to 'regional interests authority' and replace with reference to 'regional interests development approval'
- clarify that a reference to the strategic cropping area is a reference to an area that is in the strategic cropping area.

Amendment 15

Amends the Part 2 heading to provide for regulated activities. The amended heading reads 'restrictions on resource and regulated activities in areas of regional interests'.

Amendment 16 and 17

Amends clause 18 to:

- omit reference to a regional interests 'authority' and replace with reference to regional interests 'development approval'.
- provide for an exempt regulated activity as well as an exempt resource activity. An exempt regulated activity was not previously provided for.

Amendment 18

Amends clause 19 to omit reference to a regional interests 'authority' and replace with reference to regional interests 'development approval'. The amended clause provides that a person must not wilfully, or otherwise, contravene a condition of the approval. The maximum penalty values have not been changed as a result of the amendment.

Amendment 19

Omits clause 20 which provided a penalty for a person carrying out an exempt resource activity without notifying the chief executive of the intention to carry out an exempt resource activity.

This amendment is a consequential amendment to amendment 25.

Amendment 20 and 21

Amends clause 22, subclause 2 to broaden the applicability of the exemption to include a resource activity in the strategic cropping area and to clarify that for subclause 2(c) a resource activity has an impact on land if the activity has an impact on—

(a) for land in a priority agricultural area—a priority agricultural land use for the area; or

(b) for land in the strategic cropping area—the land's soil, climate and landscape features that make the land highly suitable, or likely to be highly suitable, for cropping.

Amendment 22

Amends clause 23 to give effect to the Committee's Recommendation 20 and provides:

A resource activity is an exempt resource activity for a priority agricultural area or the strategic cropping area if the activity is being carried out—

(a) on a property in the area; and

(b) within the period of 1 year starting on the day the first activity under the resource authority started to be carried out on the property.

The purpose of this amendment is to clarify when and how the exemption will apply to resource activities.

Amendment 23

Amends clause 24 to:

- give effect to the Committee's Recommendation 18 and 19;
- clarify the government's policy position of ensuring existing rights to operate a resource activity are respected and appropriately protected; and
- delete original subclause (2) that resulted in the exemption not applying to resource activities under certain CMA tenures under the Water Act 2000, section 362.

The amended clause provides a resource activity is an exempt resource activity where:

- Immediately before land became or becomes land in an area of regional interest a resource activity may be carried out lawfully on the land.

- A resource activity may be lawfully carried out on the land if it can be carried out lawfully:
  (i) under a resource authority or an environmental authority; and
  (ii) without the need for any further authority or approval to be obtained under an Act or a condition of either a resource or environmental authority; and

- The application for either a resource authority or environmental authority identified the location, nature and extent of the expected surface impacts of the activity.

Whether a resource activity may lawfully be carried out must be considered in relation to the particular day the land becomes an area of regional interest. For example, following the commencement of this Act, if a regional plan takes effect on 1 January 2015 and it identifies an area of regional interests defined under the Act e.g. a priority agricultural area, a resource activity would be lawfully carried out on that land if on 31 December 2014 a resource authority and / or an environmental authority detailed the location, nature or extent of the expected surface impacts of the activity. In this circumstance if the activity could be lawfully carried out on 31 December 2014, it will continue to be an exempt resource authority into the future. Where the resource activity requires a further authority or amendments to an existing authority relating to the location, nature or extent of the expected surface impacts of the activity the exemption does not apply.

Examples of when the location, nature and extent of the expected surface impacts of the activity would have been identified may include—

- a development plan under *Mineral Resource Act 1989*; *Petroleum and Gas (Production and Safety) Act 2004*; *Greenhouse Gas Storage Act 2009*; *Geothermal Energy Act 2010*
- a program for development and production under the *Petroleum Act 1923*
- a plan of operation under the *Environmental Protection Act 1994*
- a work program under *Mineral Resource Act 1989*; *Petroleum and Gas (Production and Safety) Act 2004*; *Greenhouse Gas Storage Act 2009*; *Geothermal Energy Act 2010*
- a statement approved by the Minister under the *Mineral Resources Act 1989*
- a program of work approved by the Minister under the *Mineral Resources Act 1989*
- a pipeline licence or facility licence under the *Petroleum and Gas (Production and Safety) Act 2004*

Amendment 24

Inserts new clause 24A after clause 24 of the Bill which provides for pre-existing regulated activities. A regulated activity is pre-existing if immediately before land became or becomes land in an area of regional interest, a regulated activity may be lawfully carried out on the land under the Planning Act.

Amendment 25

Omits clauses 25 and 26.

Clause 25 provided that small scale mining was not subject to the provisions of the Bill. Small scale mining is defined under the *Environmental Protection Act 1994* and includes a mining activity that is—

(a) carried out under a mining claim for corundum, gemstones or other precious stones, the area of which is not more than 20ha
(b) carried out under an exploration permit, for minerals other than coal, the area of which is not more than 4 sub-blocks
(c) carried out under a prospecting permit

The reason for omitting this clause from the Bill is as follows:

- mining activities for corundum, gemstones or other precious stones, are permitted under a fossicking permit or licence under the *Fossicking Act 1994*. The Fossicking Act is not a resource Act under the Bill and therefore activities under the Fossicking Act are not regulated under the Bill.
- mining activities carried out under an exploration permit for mineral other than coal are likely to be able to comply with the 12 month exemption as amended per amendment 22 and provided for in clause 23 of the Bill.
- as a result of amendment 9 (changes to clause 13 of the Bill) activities under a prospecting permit are not subject to the provisions of the Bill.

Clause 26 is not required because the outcomes can be addressed through the offence proceedings in the Bill.

Amendment 26

Amends the Part 3 heading to remove reference to regional interests 'authorities' and insert reference to regional interests 'development approvals'.

Amendment 27

Amends clause 28 to amend cross referencing of the strategic cropping area as a result of amendment 6.

Amendment 28

Amends clause 29 to remove reference to a regional interests 'authority' and insert reference to a regional interests 'development approval'.

Amendment 29

Amends clause 31 to:

- omit '5 business days after the application is made' and
- insert 'the prescribed timeframe'

The purpose of this amendment is to respond to Committee Recommendation 15 which recommended that the Bill or regulation includes assessment and decision timeframes.

Amendment 30

Amends the Part 3 heading to include a reference to 'application'. The amended heading provides for amending or withdrawing application.

Amendment 31

Inserts new clause 33A after clause 33 to give effect to the Committee's Recommendation 7 and 8 and to provide for the owner of land to be given a notice of an amendment to or withdrawal of a regional interests development approval.

Amendment 32, 33 and 34

Amend clause 34 of the Bill to give effect to the Committee's Recommendations 10, 11, 15 & 16.

Amendment 32 provides that notification must be carried out if it has not been granted an exemption by the chief executive 'within the prescribed timeframe'.

Amendment 33 provides for regulated activities (in addition to resource activities) to be notified.

Amendment 34 clarifies that it is only the chief executive (not the assessor) that can require an applicant to notify and application through a requirements notice.

Amendment 35

Amends 36 to omit subclause 3 and 4. This amendment is a consequential amendment from amendment 34.

Amendment 36 and 37

Amends clause 38 and 41 to give effect to Committee Recommendation 15.

Amendment 36 provides for submissions to be published or made available for inspection within the prescribed timeframe.

Amendment 37 provides for an assessing agency to assess an application within the prescribed timeframe.

Amendment 38

Amends clause 41 to omit the word 'decision' in subclause (2)(b) which states 'any criteria for the decision prescribed under a regulation' and replace it with the word 'assessment'. The amended clause provides that the assessing agency must, within the limits of its functions, consider any criteria for the assessment prescribed under a regulation.

Amendment 39 and 40

Amend clause 42 to give effect to Committee Recommendation 15.

Amendment 39 provides that an assessing agency may provide a response on an application to the chief executive within the prescribed timeframe.

Amendment 40 provides that an assessing agency must give the application a copy of the response within the prescribed timeframe.

Amendment 41 and 42

Amend clause 44.

Amendment 41 gives effect to Committee Recommendation 15 and provides that an assessor may issue a require requirement notice within the prescribed timeframe.

Amendment 42 is a consequential amendment to amendment 34 and clarifies that only a requirement notice issued by the chief executive can require an application to be notified.

Amendment 43

Inserts the requirement for the chief executive to ask the Gasfields Commission for advice about an assessment application if the application relates to a resource activity in a priority agricultural area, the strategic cropping area or a priority living area; and

- the application is notifiable; or
- in the chief executive's opinion, the expected surface impacts of the resource activity are significant.

The existing provisions in the clause are renumbered to be subclause (2).

Amendment 44

Amends clause 47 to give effect to the Committee Recommendation 15 and provide that the chief executive must decide an application within the prescribed timeframe.

Amendment 45 and 46

Amends clause 48 to remove reference to a regional interests 'authority' and insert reference to a regional interests 'development approval'.

Amendment 47

Amends clause 49, subclause 1 to insert new point (e) to provide that in deciding an assessment application, the chief executive must consider any advice about the application given by the Gasfields Commission.

Amendment 48

Omits clause 50 to give effect to the Committee's Recommendation 12 and in response to stakeholder feedback.

Any response provided by an assessing agency, including an assessing agency that is the local government, will be considered by the chief executive in the decision as required under clause 49.

Amendment 49

Amends clause 51 to clarify that a regional interests condition may restrict the carrying out of a resource activity or regulated activity by requiring the applicant to:

- start or complete the activity by a stated date or within a stated period; or
- ensure the impact of the activity is limited or restricted to a stated level.

Amendment 50 and 51

Amends clause 51 to give effect to Committee Recommendation 13 and:

- omit reference to 'a' strategic cropping area and replace with a reference to 'the' strategic cropping area.
- clarify that mitigation will be a condition, not a requirement. The amended subclause provides that a condition under subsection (1)(c) is an SCL mitigation condition.
- provide that a condition must be relevant to, but not an unreasonable imposition on, the resource activity or regulated activity or that a condition must be reasonably required to manage the impact of the activity on an area of regional interests.

Amendment 52, 53 and 54

Amends clause 52 of the Bill.

Amendment 52 is as a consequential amendment of giving effect to Committee Recommendation 15. It omits the words 'as soon as practicable after deciding an assessment application' to provide for a timeframe to be prescribed in the regulation for the chief executive to given notice about a decision.

Amendment 53 amends Subclause 2 has been amended to add point (c) which provides that if the Gasfields Commission gave the chief executive advice about the assessment application the chief executive must give a copy of the decision notice to the Gasfields Commission.

Amendment 54 provides two new subclauses. New subclause 4 provides that if the chief executive's decision about the assessment application is inconsistent with advice given by the Gasfield Commission or if an assessing agency for the application is a local government—the local government; the decision notice must include reasons for the inconsistency.

New subclause 5 gives effect to Committee Recommendation 15 and provides that the decision notice or a copy of the decision notice must be given within the prescribed timeframe.

Amendment 55

Amends clause 53 to give effect to Committee Recommendation 15 to provide that the chief executive must publish a notice about the decision within the prescribed timeframe.

Amendment 56

Amends clause 54 to remove reference to a regional interests 'authority' and insert reference to a regional interests 'development approval'.

Amendment 57

Amends clause 54 to provide that a regional interests development approval must-

- be in the approved form; and
- state a description of the land; the resource activity or regulated activity approved; the area of regional interests for which the activity is approved and any regional interests conditions on which the approval is granted.

Amendment 58, 59, 60 and 61

Amends clause 55 to remove reference to a regional interests 'authority' and insert reference to a regional interests 'development approval' or 'approval'.

Amendment 62

Inserts a new division and three new clauses after clause 55 to provide for amending an approval issued under the Act.

New clause 55A provides that the holder of a regional interests development approval may, in writing, ask the chief executive to make either of the following amendments to the approval—

(a) a minor amendment;
(b) an amendment the chief executive is satisfied would not adversely change the impact of the resource activity or regulated activity on the area of regional impact.

Subclause 2 provides that before deciding whether to make a requested amendment, the chief executive may give the holder of the approval a notice requiring the holder to notify the application under division 4 within a reasonable stated period.

Subclause 3 provides that if, in the chief executive's opinion, the holder has contravened the notice, the chief executive may refuse to decide whether to make the requested amendment until the notice has been compiled with to the chief executive's satisfaction.

Subclause 4 provides that the holder of the approval must bear any costs incurred in complying with the notice.

Subclause 5 provides that in deciding whether to make a requested amendment, the chief executive must consider the matters mentioned in section 49.

An amendment under this clause may constitute any of the following changes to the approval (as examples):

(a) a change that merely corrects a mistake;
(b) a change that does not result in new or substantially different surface impacts;
(c) a change that does not require the application to be referred to any additional assessing agencies.

In support of Committee Recommendation 6 guideline material will be prepared to clarify what is considered to constitute a minor amendment.

New clause 55B provides for a notice about the decision to make a requested amendment to a regional interests development approval to be provided to the approval holder as soon as practical after making the decision. It also provides that a copy of the decision must be provided to the following:

(a) if the holder of the approval is not the owner of the land—the owner of the land; and
(b) if the assessment application for the approval was referrable—each assessing agency for the application; and
(c) if the Gasfields Commission gave the chief executive advice about the assessment application for the approval—the Gasfields Commission.

New clause 55C provides for when the amendment takes effect. It states that as soon as practicable after deciding to make a requested amendment to a regional interests development approval, the chief executive must—

(a) amend the approval to give effect to the requested amendment; and
(b) issue the amended approval to the holder.

Amendment 63

Inserts new clause 55D that provides that a regional interests development approval attaches to the land. This means that despite any change in land ownership or occupation the validity of the approval is not affected. This is different to the Environmental Authority and the resource authority which both attach to a holder.

Amendment 64

Amends clause 56 to give effect to the Committee's Recommendation 17 and to provide that the conditions of a regional interests development approval only prevail over the conditions of a relevant authority where they relate to a priority agricultural area or the strategic cropping area.

Amendment 65, 66 and 67

Amends clauses 57, 61 and 67 to remove reference to a regional interests 'authority' and insert reference to a regional interests 'development approval'.

Amendment 68

Amends Part 5 heading to insert 'and declarations' after appeals.

Amendment 69

Amends clause 68 of the Bill to omit reference to 'a person who owns land' and insert 'an owner of land'.

The amendment corrects the reference to align the clause with the definition of 'an owner of land' provided in Schedule 1 of the Bill.

Amendment 70 and 71

Amends clause 68 to:

- remove reference to a regional interests 'authority' and insert reference to a regional interests 'development approval'.
- provide that a regional interest development approval, for the purposes of appeals, includes a decision to make, or refuse to make, a requested amendment to regional interests development approval.

Amendment 72

Amends clause 69 to include the following notes:

See the Sustainable Planning Act 2009, chapter 7, part 1 for provisions about the powers, processes and procedures of the court, including, for example—

- *section 457 (costs);*
- *section 495 (appeal by way of hearing anew);*
- *division 12 (alternative dispute resolution).*

The purpose of including these notes in clause 69 is to clarify that these matters (costs, appeal by way of hearing anew, and alternative dispute resolution) were contemplated in drafting the Bill and that the decision was made that the relevant provision apply.

Amendment 73

Inserts new clause 71A after clause 71 which provides that an appellant must, within 10 business days after starting an appeal, give notice of the appeal to each of the following—

(a) a respondent or co-respondent for the appeal;
(b) if the appellant is not the owner of land for the regional interests decision—the owner of the land.

Subclause 2 clarifies that the notice must state—

(a) the grounds of the appeal; and
(b) if the person given the notice is the owner of the land—that the person may apply to the court to be a co-respondent for the appeal.

Amendment 74

Amends clause 72 to give effect to Committee Recommendation 21 to amend the provisions relating to stay of operation of a decision.

Subclause 1 provides that the starting of an appeal does not stay the operation of the decision appealed against.

Subclause 2 clarifies that the court may stay the operation of the decision to secure the effectiveness of the appeal.

Subclause 3 provides that a stay—

(a) may be given on the reasonable conditions as the court considers appropriate and
(b) operates until the first of the following happens—
    a. the period fixed by the court ends;
    b. the appeal is decided, withdrawn or dismissed; and
(c) may be revoked or amended by the court.

This amendment removes the provision for an automatic stay of operation of a decision once an appeal is started as only the court will be able to stay the operation of a decision.

This amendment also addresses the Committee's concerns regarding the practical implications of an automatic stay of operations which could result in delays until the case is heard in Court.

Amendment 75

Inserts two new clauses after clause 72 which provide for who must prove case for appeal and declarations.

New clause 72A, subclause 1 provides that the appellant has the responsibility for establishing that the appeal should be upheld.

Subclause 2 provides an important exception to this in that in the appeal is brought by either of the following, it is for the applicant for a regional interests decision to establish that the appeal should be dismissed—

(a) if the applicant is not the owner of the land—the owner of the land;
(b) an affected land owner.

New clause 72B provides power to the court to hear and decide declaratory matters under the Bill or to make orders about a declaration made by the court. The new clause allows for any person to initiate a proceeding for a declaration. The court has jurisdiction to hear and decide a proceeding about the following—

(a) a matter done, to be done, or that should have been done under this Act
(b) the construction of the Act or a regional plan for a particular circumstance

Subclause 2 of new clause 72B provides that the *Sustainable Planning Act 2009*, section 456 applies to a proceeding started under this section.

Section 456 of the *Sustainable Planning Act 2009* provides the following:

- a proceeding may be brought in a representative capacity with the consent of the person on whose behalf the proceeding is brought
- that a person on whose behalf the proceeding is brought may contribute to or pay the legal costs incurred by the person bringing the proceeding
- that the court may also make an order about a declaration made by the court
- the person who starts the proceeding is to give written notice of the proceeding to the chief executive the day the person starts the proceeding

- the Minister may elect to be a party to the proceeding if the Minister is satisfied the proceeding involved a State interest. The Minister may elect to be a party by filing a notice of election in the approved form in the court.

Amendment 76

Amends clause 73 to remove reference to a regional interests 'authority' and insert reference to a regional interests 'development approval'.

Amendment 77

Inserts new clause 78A after clause 78 which allows the court to issue an order on the defendant after a hearing.

Subclause 2 clarifies that the order may be made in addition to or instead of any other penalty the court may impose.

Subclause 3 identified the sorts of orders the court can make if appropriate.

Subclause 4 requires the order to state a time or period for compliance.

Subclause 5 makes it an offence for a person to contravene the court's order and this is punishable by a fine or imprisonment.

Amendment 78

Amends clause 79 to appropriately cross reference 'the' strategic cropping area and to clarify the investigation and enforcement functions of an authorised person under the *Vegetation Management Act 1999.*

Subclause 2 clarifies that the functions of an authorised person (natural resources) are under the *Vegetation Management Act 1999* and are provided to ensure compliance with this Act.

Subclause 3 clarifies that an authorised person can perform their function by—

(a) exercising powers under part 3 of the *Vegetation Management Act 1999* other than part 3, division 1, subdivision 7 and 8
(b) entering a place under section 30 of the *vegetation Management Act 1999*

Subclause 3 (c) provides that on an application by an authorised person (natural resources) a magistrate may issue a warrant for a place under section 33 of the *Vegetation Management Act 1999*.

Amendment 79

Amends clause 80 to clarify the functions for authorised persons under a local government act and to include reference and investigation and enforcement functions under the *City of Brisbane Act 2010*.

Subclause 2 provides that the functions of an authorised person (local government) are under the *Local Government Act 2009* or the *City of Brisbane Act 2010* and are provided to ensure compliance with this Act.

Subclause 3 provides that:

(a) an authorised person under the *Local Government Act 2009* may exercise powers under chapter 5, part 2, division 1 of the *Local Government Act 2009*
(b) an authorised person under the *City of Brisbane Act 2010* may exercise powers under chapter 5, part 2, division 1 of the *City of Brisbane Act 2010*
(c) on an application by an authorised person (local government) a magistrate may issue a warrant for a place under section 130 of the *Local Government Act 2009* or section 119 of the *City of Brisbane Act 2010* only if the magistrate is satisfied there are reasonable grounds

Amendment 80

Amends clause 81 to clarify the functions for authorised persons under the Environmental Protection Act.

Subclause 2 provides that the functions of an authorised person (environment) are under the *Environmental Protection Act 1994* and are provided to ensure compliance with this Act.

Subclause 3 clarifies that an authorised person can perform their function by—

(a) exercising powers under chapter 9 of Environmental Protection Act
(b) entering a place under section 452 of the Environmental Protection Act

Subclause 3 (c) provides that on an application by an authorised person (environment) a magistrate may issue a warrant for a place under section 456 of the Environmental Protection Act.

Amendment 81

Amends the heading for clause 90 to correctly cross reference part 8 instead of part 7.

Amendment 82

Inserts new clauses that incorporate into the Bill the existing transitional provisions provided for in the *Strategic Cropping Land Act 2011*. The new clauses give effect to the Committee's Recommendation 19 and 22 and respond to stakeholder feedback.

New clause 90A provide for existing validation applications that were made and not decided, withdrawn or lapsed under the *Strategic Cropping Land Act 2011* to be dealt with and decided under the repealed Act as if this Act has not been enacted.

Subclause 2 identifies that a decision must be made by the chief executive (natural resources).

Subclause 3 further provides that a decision made about validation must be reflected on the SCL trigger map.

New clause 90B provides that a resource activity is an exempt resource activity for a strategic cropping area under this Act if the environmental authority or resource authority for the activity was issued or granted—

(a) before 30 January 2012; or
(b) as a result of an application that was excluded under the repealed Act, chapter 9, part 3, division 2 or 3.

New clause 90C provides for the following conditions to be imposed for future environmental authority or mining leases relating to EPC 891:

- no open cut mining can be carried out under the lease.
- the holder of the environmental authority must use all reasonable endeavours to rehabilitate all impacts on the land from underground coal mining carried out under the lease.

Subclause 4 clarifies that this new clause does no limit or otherwise affect a power under the Act, the *Mineral Resources Act 1989* or the Environmental Protection Act to impose other conditions on the lease or authority, or a resource activity for the lease or authority, that are no inconsistent with these conditions.

Amendment 83

Amends clause 91 to provide that existing applications for SCL protection decisions made under the *Strategic Cropping Land Act 2011* must continue to be dealt with and decided by the chief executive (natural resources) under the repealed Act as if this Act has not been enacted.

This amendment also removes reference to ‘a’ strategic cropping area and replace with a reference to ‘the’ strategic cropping area.

Amendment 84

Amends clause 92 to remove reference to ‘a’ strategic cropping area and replace with a reference to ‘the’ strategic cropping area.

Amendment 85

Amends clause 92 to correct a cross reference as a result of other amendments.

Amendment 86 and 87

Amends clause 92 to remove reference to ‘authority’ and replace with ‘development approval’ or ‘approval’.

Amendment 88

Amends clause 93 to correctly reference 'the' strategic cropping area.

Amendment 89, 90 and 91

Amends clause 93 and 94 to remove reference to 'authority' and replace with 'development approval' or 'approval'.

Amendment 92, 93 and 94

Amends clause 95, 96 and 97 to appropriately cross reference 'the' strategic cropping area.

Amendment 95

Inserts new Part 8A and clause 97A which provides a transitional regulation making power which expires one year after commencement of the Act. This is necessary to provide for any circumstance where a transitional provision required to protect rights acquired under existing legislation is not appropriately reflected in the Act.

Amendment 96 and 97

Amends clause 100 to remove reference to 'authority' and replace with 'development approval' or 'approval'.

Amendment 98

Inserts Part 10 and new clause 102, 103 and 104 which provide for consequential amendments to the *Gasfields Commission Act 2013*.

Amendment 99 to Amendment 110

Amends schedule 1 (dictionary) to:

- correct cross references included in definitions which have changes as a result of other amendments to the Bill.
- correct or clarify definitions.
- insert new definitions.

Amendment 99 omits reference to (1).

Amendment 100 inserts the definition for cropping into the dictionary. This definition was previously provided in clause 10 which defined the strategic cropping area.

Amendment 101 omits the definition of 'exempt resource activity' from Schedule 1.

Amendment 102 inserts new definitions for exempt regulated activity, exempt resource activity, expected surface impacts and Gasfields Commission.

Amendment 103 inserts a definition for lot.

Amendment 104 inserts a definition for mitigation value.

Amendment 105 amends the definition of owner of land to give effect to Committee Recommendation 5 and provide for owner of land to include a lease issued under the *Land Act 1994* for agricultural, grazing or pastoral purposes.

Amendment 106 inserts a definition for property.

Amendment 107 omits definitions for 'regional interests authority' and replaces it with a definition for 'regional inters development approval' and amends the definitions for 'regional interests condition', 'regional interests decision' and 'regional plan' to provide new cross references as a result of amendments.

Amendment 108 inserts a definition for 'requested amendment'.

Amendment 109 inserts a definition for 'road', 'SCL mitigation condition' and 'SCL trigger map'.

Amendment 110 inserts a definition of 'watercourse'.