Environmental Protection and Other Legislation Amendment Bill 2014

Explanatory Notes

FOR

Amendments to be moved during consideration in detail by the Honourable Andrew Powell MP, Minister for Environment and Heritage Protection

Title of the Bill

The short title of the Bill is the *Environmental Protection and Other Legislation Amendment Bill 2014.*

Objectives of the Amendments

The objectives of the amendments are to:

- to include amendments in the Bill for the enhanced protection of the Great Barrier Reef; and
- address errors, improve administrative processes and clarify policy intent of the amendments in the Bill which were identified during the Committee process.

Achievement of the Objectives

Environmental Offsets Act 2014

The Bill will achieve the objectives of the *Environmental Offsets Act 2014* by:

- Removing minor legislative errors;
- Providing greater clarity for proponents in relation to the key roles and responsibilities of the Commonwealth, State and local governments in imposing of an offset condition;
- Providing greater clarity in relation to when an offset condition may or may not be applied under the new framework;
- Providing greater clarity in relation to the definition of an "administering agency";

- Allowing local governments to approve a financial settlement amount for impacts on Matters of Local Environmental Significance and Matters of State Environmental Significance prescribed under a regulation that is no greater than the financial settlement amount calculated in accordance the Environmental Offsets Policy; and
- Allowing all future financial settlement payments to be made directly to the Government's new offsets account instead of to the Balance the Earth Trust which is presently being phased out.

Environmental Protection Act 1994

- The policy objective to enhance the protection of the Great Barrier Reef is achieved through recognising that the Great Barrier Reef World Heritage Area is an area of special significance and thereby defining harm to the Great Barrier Reef World Heritage Area to be serious environmental harm and ensuring that the court considers this when imposing a penalty under the *Environmental Protection Act 1994*.
- The policy objective of addressing errors, improving administrative processes and clarifying policy intent of the amendments in the Bill is achieved through making these amendments to correct, improve and clarify the Bill.

Sustainable Planning Act 2009

- The policy objective allows offset conditions imposed by the State to be paid to the new offset account rather than a former environmental offset trust such as the Balance the Earth Trust.

Waste Reduction and Recycling Act 2011

- The policy objectives are achieved through making these amendments to correct, improve and clarify the Bill.

Alternative Ways of Achieving Policy Objectives

Environmental Offsets Act 2014

These amendments make changes to the existing amendments to address errors, improve administrative processes and clarify policy intent and therefore there are no other ways of achieving the policy objectives.

Environmental Protection Act 1994

Additionally, to provide confidence that the Great Barrier Reef is being effectively managed and protected, I am proposing to include amendments in the Bill for the enhanced protection of the Reef. As you know, the World Heritage Committee met in Qatar in June 2014 and made a number of recommendations regarding the conservation and management of the Great Barrier Reef World Heritage Area (GBRWHA). These amendments define harm to the GBRWHA to be serious environmental harm and ensure that the court considers this when imposing a penalty under the Environmental Protection Act 1994. They are anticipated to be used infrequently and are most likely to apply to major industrial incidents causing serious environmental harm.

Otherwise, these amendments make changes to the existing amendments to address errors, improve administrative processes and clarify policy intent and therefore there are no other ways of achieving the policy objectives.

Sustainable Planning Act 2009

The amendment makes changes to improve administrative efficiency and therefore there are no other ways of achieving the policy objectives.

Waste Reduction and Recycling Act 2011

These amendments make changes to the existing amendments to address errors, improve administrative processes and clarify policy intent and therefore there are no other ways of achieving the policy objectives

Estimated Cost for Government Implementation

The proposed amendments to the *Environmental Offsets Act 2014* are not expected to increase the present costs to government of administering offsets under the current Queensland Environmental Offsets Framework.

The remaining amendments are to be implemented within current budget allocations.

Consistency with Fundamental Legislative Principles

These amendments are consistent with fundamental legislative principles.

Consultation

Environmental Offsets Act 2014

The department consulted widely with key industry groups during the finalisation of these amendments.

Environmental Protection Act 1994

The amendments for the enhanced protection of the Great Barrier Reef will only apply if a person causes unlawful environmental harm to the Great Barrier Reef World Heritage Area. This is unlikely to capture responsible corporate citizens and therefore consultation was not considered necessary.

Otherwise, these amendments address errors, improve administrative processes and clarify policy intent of the amendments in the Bill which were identified during the Committee process. Consequently, further consultation was not considered necessary.

Sustainable Planning Act 2009

The department consulted widely with key industry groups during the finalisation of these amendments.

Waste Reduction and Recycling Act 2011

These amendments address errors, improve administrative processes and clarify policy intent of the amendments in the Bill which were identified during the Committee process. Consequently, further consultation was not considered necessary.

NOTES ON PROVISIONS

Clause 2 (Commencement)

Clause 1 amends clause 2 of the Bill which amends the commencement section to provide that the amendments which insert the new enforceable undertakings tool commences by proclamation. As a result of the recommendation of the Agriculture, Resources and Environment Committee, the government agreed to commence these provisions by proclamation.

Environmental Offsets Act 2014

After clause 9

Clause 2 inserts a new **clause 9A (Amendment of s 5 (Relationship with particular Acts))** into the Bill. This amendment amends a minor error in the note to subsection 5(3) of the *Environmental Offsets Act 2014*, to refer to the correct section – the existing section 346B of the *Sustainable Planning Act 2009*.

After clause 10

Clause 3 inserts a new **clause 10A (Amendment of s 13 (Content of environmental offsets policy))** to amend section 13 of the *Environmental Offsets Act 2014*. This amendment is required because of the amendments proposed in clause 15 that have the effect of providing greater flexibility for a local government to determine a financial settlement offset requirement that varies from the environmental offsets policy.

After clause 10

Clause 4 inserts a new clause 10B which inserts a new **section 13B (What this part is about)** into the *Environmental Offsets Act 2014*. This section provides that the requirements of Part 5 of the *Environmental Offsets Act 2014* apply if an administering agency may impose an offset condition on an authority, under another Act, for an impact for a prescribed environmental matter. This section applies despite anything to the contrary mentioned in the other Act – other than section 5 of the *Environmental Offsets Act 2014* or section 325(1) of the *Sustainable Planning Act 2009*. This is necessary in order to retain the effect of those sections.

Section 325(1) of the *Sustainable Planning Act 2009* prevents an assessment manager from varying a concurrence agency's response. New section 13B confirms that a decision about whether to impose an offset condition made by an assessment manager made under Part 5 does not affect the operation of section 325(1) of that Act – the assessment manager cannot vary a concurrence agency's response to attach an offset condition.

Clause 11 (Amendment of s 14 (Imposing offset condition))

Clause 5 replaces clause 11 of the Bill, which amends section 14 of the *Environmental Offsets Act 2014* to replace the entire section 14, rather than just amending it. The new

section 14 provides that the administering agency must consider any relevant offset condition that has already been imposed on an authority issued under another Act for the same or substantially the same prescribed impact and the same or substantially the same prescribed environmental matter. This was previously discretionary. This change has been instigated in order to help reduce the duplication of offset requirements by limiting an administering agency's ability to impose an offset condition on an authority where another offset condition has already been imposed under another Act for the same prescribed impact and the same or substantially the same prescribed environmental matter.

Clause 12 (Amendment of s 15 (Restriction on imposition of offset condition))

Clause 6 replaces clause 12 of the Bill, to replace section 15 of the *Environmental Offsets Act 2014*, rather than just amending it. The new section 15 provides that an administering agency may impose an offset condition only if the Commonwealth has not assessed the same or substantially the same impact and the same or substantially the same prescribed environmental matter under the *Environmental Protection and Biodiversity Conservation Act 1999 (Cwlth)* as a controlled action, the *Great Barrier Reef Marine Park 1975 (Cwlth)*, or another Commonwealth Act prescribed under a regulation. This requirement applies regardless of whether or not the Commonwealth's assessment resulted in the imposition of an environmental offset condition. However, this limitation does not apply where the prescribed environmental matter to which the environmental offset condition relates is a protected area.

The new section 15 also specifies additional limitations on the powers of local governments – specifying that a local government may only impose an offset condition for those matters that are prescribed as matters of local environmental significance, or other matters that are further prescribed for the purpose of this section. The purpose of this amendment is to prevent an administering agency that is a local government from considering offsets for matters of state and national environmental significance unless authorised under a regulation.

Clause 13

Clause 7 deletes clause 13 of the Bill, which inserted **section 15A (Restriction on imposition of offset condition—State condition imposed or decision made not to impose State condition)**. This section specified circumstances where a local government must not impose an offset condition. However this is now addressed through simplified amendments to section 15 in these amendments (see above).

After clause 13

Clause 8 inserts new **clause 13 (Amendment of pt 6 hdg (Requirements about offset conditions))**, to amend the heading of Part 6 of the *Environmental Offsets Act 2014*, by replacing the current reference to "offset conditions" with the new reference to "environmental offsets". This is necessary because Part 6 now allows an offset proposal to be submitted and approved before an authority is granted.

After clause 13

Clause 9 inserts new **clause 13A (Amendment of s 16 (Conditions that apply under this Act to authority))**, to amend section 16 of the *Environmental Offsets Act 2014*. This clause applies if an offset condition has been imposed on an authority under another Act for a

significant residual impact of a prescribed activity on a prescribed environmental matter. It specifies that sections 19B, 22, 23 and 25 of the Act state further conditions (deemed conditions), under this Act, that are imposed on the authority. This amendment replaces the deemed condition under section 18 with new section 19B.

After clause 13

Clause 10 inserts new clause 13B, to replace **section 18 (Electing how to deliver environmental offset)** and **section 19 (Agreed delivery arrangements)** of the *Environmental Offsets Act 2014*. These amendments allow an entity to elect to deliver an environmental offset for a prescribed activity or a staged activity before or after the authority for the activity is granted. This is necessary as a consequential amendment of new section 19A. All other requirements under former section 18 and 19 remain unaffected and provide a process for reaching agreement for delivery of an environmental offset. The new section 19 condenses the previous provisions and allows agreed delivery arrangements to be entered into before (an early arrangement) or after the granting of the relevant authority for a prescribed activity. This provides greater flexibility in offset delivery.

After clause 13

Clause 11 inserts new clause 13C, to insert a new **section 19A (Agreed delivery arrangement before authority granted)** into the *Environmental Offsets Act 2014*. This new section provides the requirements for delivering an offset where an agreed delivery arrangement has been entered into prior to the granting of the relevant authority for a prescribed activity (an early arrangement). This includes requirements where the administering agency thinks the offset should be delivered in a different way stated in the early agreement as a result of a change to the proposed impact. This section also provides that a regulation may provide for review of the decision to require the offset to be delivered in a different way to that stated in the early arrangement. This amendment is designed to reduce the time taken from when an approval is issued to when a prescribed activity involving a significant residual impact on a prescribed environmental matter may commence and to provide greater flexibility in the way an offset can be delivered under certain circumstances.

After clause 13

Clause 12 inserts new clause 13D, to insert a new **section 19B (Deemed condition for agreed delivery arrangement)** in the *Environmental Offsets Act 2014*. This amendment retains the requirement under former section 18(2) of the *Environmental Offsets Act 2014* - that significant residual impacts on a prescribed environmental matter, arising from a prescribed activity, cannot occur until there is an agreed delivery arrangement. The purpose of this is to provide certainty that an offset will be delivered for the loss of a prescribed environmental matter, in the form of a legally binding agreement with the State before any impacts occur.

After clause 13

Clause 13 inserts new clause 13E, to replace **section 20 (Amending agreement after prescribed activity starts)** of the *Environmental Offsets Act 2014*, to provide circumstances where an agreed delivery arrangement can be amended after the prescribed environmental activity has started. This provides greater flexibility in offset delivery.

After clause 13

Clause 14 inserts new clause 13F, to amend **section 21 (What is a *proponent –driven offset*)** of the *Environmental Offsets Act 2014* to reflect the new ability for an entity to elect to deliver a proponent-driven offset before or after the granting of the relevant authority for a prescribed activity. This provides greater flexibility in offset delivery.

After clause 13

Clause 15 inserts new clause 13G, to amend **section 23 (What is a *financial settlement offset*)** of the *Environmental Offsets Act 2014* in order to permit local governments to approve financial settlement payments that are up to but not greater than the amount calculated in accordance with the Environmental Offsets Policy. This gives local government greater flexibility in approving financial settlement payments where the actual costs of delivering the offset are less than the calculator in the Policy. However, despite this, section 89(2)(a) of the *Environmental Offsets Act 2014* still requires all local governments to ensure a conservation outcome is achieved for the matters concerned regardless of the amount that is required

After clause 13

Clause 16 inserts new clause 13H, to amend **section 24 (Requirements for financial settlement offsets)** of the *Environmental Offsets Act 2014* to confirm that, where the relevant authority authorises staging of the prescribed activity, offset payments can also be staged. This provides greater flexibility in offset delivery.

Clause 14 (Insertion of new pt 6A)

Clause 17 replaces **section 25A (When particular offset conditions stop applying—condition imposed for same area by Commonwealth)** of the *Environmental Offsets Act 2014*, which provides a process for an authority holder to seek removal of duplicated condition requirements across authorities. This section provides the requirements for the authority holder to make an application to remove duplicated conditions, including specifying to whom the application must be made, and provides the requirements for the administering agency who receives the application. This section also provides that a regulation may provide for a review of the decision. The purpose of this amendment is to allow a proponent to remove a legal requirement relating to an offset condition imposed on an authority where a subsequent condition relating to the same prescribed impact and the same or substantially the same prescribed environmental matter has been imposed on another authority.

After clause 15

Clause 18 inserts new clause 15A, to insert new **section 95A (Undecided applications for authorities)** and **section 95B (Amendment of existing authorities)** into the *Environmental Offsets Act 2014*. Section 95A applies to applications for an authority that were made under an existing Act, but which were not dealt with before commencement of the *Environmental Offsets Act 2014*. This section provides that, despite section 95 of the *Environmental Offsets Act 2014*, the environmental offsets policy under this Act may be considered in whole or in part instead of any former offset policy. This is to provide greater flexibility to proponents in terms of the way a current application is delivered.

Section 95B provides – despite section 95 of the Act – for circumstances where a holder of an authority for an authority application made before commencement of the *Environmental Offsets Act 2014* may seek consideration of the environmental offsets policy under this Act, in whole or in part, instead of any former offset policy. This is to provide greater flexibility to proponents in terms of the way a current application is delivered and remove requirements to deliver an offset to reflect the new environmental offset framework.

Clause 16 (Amendment of sch 2 (Dictionary))

Clause 19 amends clause 16 of the Bill, to amend the definition of 'administering agency' under schedule 2 of the *Environmental Offsets Act 2014*, ensuring that the agency that had power to impose the condition makes decisions under this Act.

Clause 16 (Amendment of sch 2 (Dictionary))

Clause 20 amends clause 16 of the Bill which amends the Dictionary to the *Environmental Offsets Act 2014* to link to the definition of agreed delivery arrangement specified in section 19(4) of the Act.

Clause 16 (Amendment of sch 2 (Dictionary))

Clause 21 amends clause 16 of the Bill which amends the Dictionary to the *Environmental Offsets Act 2014* amends the definition of "impose" to incorporate the phrase "includes tell an assessment manager under the Planning Act to impose an offset condition", which ensures that the application of the term aligns with the Planning Act.

Clause 16 (Amendment of sch 2 (Dictionary))

Clause 22 amends clause 16 of the Bill which amends the Dictionary to the *Environmental Offsets Act 2014* to insert a new definition for the term "local government condition" which means "an offset condition that may be imposed on an authority by a local government".

Clause 16 (Amendment of sch 2 (Dictionary))

Clause 23 amends clause 16 of the Bill which amends the Dictionary to the *Environmental Offsets Act 2014*, to insert a new definition for the term "Planning Act" which means "the *Sustainable Planning Act 2009*".

Clause 16 (Amendment of sch 2 (Dictionary))

Clause 24 amends clause 16 of the Bill which amends the Dictionary to the *Environmental Offsets Act 2014* to link to the definition specified in section 10(4) of the Act and to omit the link to the previous section 10(1)(c) of the Act.

Environmental Protection Act

Before clause 18

Clause 25 inserts a new clause 17A to amend section 17 (Serious environmental harm) of the *Environmental Protection Act 1994*. Section 17 defines "serious environmental harm" for the purposes of the *Environmental Protection Act 1994* and its subordinate legislation.

Subsection (1)(b) states that environmental harm caused to an area of high conservation value or special significance is, by definition, serious environmental harm.

The World Heritage Committee met in Qatar in June 2014 and handed down a number of recommendations regarding the conservation and management of the Great Barrier Reef World Heritage Area (GBRWHA). One of the key requests was for a progress report to be submitted, by February 2015, which would include the Reef 2050 Long-Term Sustainability Plan that the governments are preparing. The Committee will re-consider the Great Barrier Reef's world heritage status, including whether the reef warrants inclusion on the List of World Heritage in Danger, at its next annual meeting in 2015. The Queensland and Australian governments are continuing to work together to address UNESCO's requests and to provide confidence that the reef is being effectively managed and protected.

To support enhanced protection of the Great Barrier Reef World Heritage Area, the definition of "serious environmental harm" is amended to include a clear statement that the GBRWHA is an area of special significance. The change would only apply to the definition of "serious environmental harm" but it would remove the onus of proof from the State to demonstrate that the GBRWHA is an area of special significance in a prosecution. The definition is inclusive, not exclusive (i.e. the GBRWHA is not the only area of special significance).

Note: the term "Great Barrier Reef World Heritage Area" is defined in the Dictionary to the *Environmental Protection Act 1994* under changes made as part of these amendments to the Bill.

Clause 20 (Insertion of new s 19A)

Clause 26 amends clause 20 of the Bill which inserts a new section 19A (Interaction between prescribed ERAs and resource activities) into the *Environmental Protection Act 1994*. Section 19A was inserted to clarify that a prescribed ERA can be conditioned as part of a resource activity. However, the section as drafted suggests that it is only once the conditions have been imposed that they are taken to be prescribed ERAs. This is not the intent, which is that the *power* to impose conditions on the environmental authority which is when the ancillary activities should be treated as a prescribed ERA. This amendment makes this clear.

Clause 22 (Amendment of s 49 (Decision on whether EIS may proceed))

Clause 27 amends clause 22 of the Bill which amends section 49 of the *Environmental Protection Act 1994*. Section 49 determines whether the assessment an EIS can proceed after submission of the EIS. The intention of the changes in the Bill was to make it possible for the proponent to have time to respond to any information requests from the department within the decision period – otherwise the decision maybe to refuse.

However, this amendment has raised concerns from industry in the circumstance where the proponent does not agree to the extension. Consequently, this amendment is being changed to remove subsections (1A) and (1B) so that the extension will only happen with the agreement of the applicant.

Clause 27 (Amendment of s 56A (Assessment of adequacy of response to submission and submitted EIS))

Clause 28 amends clause 27 of the Bill which amends section 56A of the *Environmental Protection Act 1994*. Section 56A determines whether the assessment of an EIS can proceed after the proponent responds to submissions on the EIS. The intention of the changes in the Bill was to make it possible for the proponent to have time to respond to any information requests from the department within the decision period – otherwise the decision maybe to refuse.

However, this amendment has raised concerns from industry in the circumstances where the proponent does not agree to the extension. Consequently, this amendment is being changed to remove subsections (2A) and (2B) so that the extension will only happen with the agreement of the applicant.

Clause 47 (Amendment of s 243 (Definitions for pt 8))

Clause 29 amends clause 47 of the Bill which amends section 243 of the *Environmental Protection Act 1994* to correct a drafting error.

Clause 61 (Replacement of ch 5A, pts 1 and 2)

Clause 30 amends clause 61 of the Bill which replaces the process for making an ERA standard. This amendment amends section 318B (Consideration of submissions) of the *Environmental Protection Act 1994* to correct a drafting error.

Clause 71 (amendment of s 358 (When order may be issued))

Clause 31 amends clause 71 of the Bill which amends section 358 of the *Environmental Protection Act 1994*. This amendment removes the ground for issuing an environmental protection order for non-compliance with an enforceable undertaking because it is being replaced with an offence of not complying with the undertaking.

Clause 100 (Amendment of s 497 (Limitation on time for starting summary proceedings)

Clause 32 amends clause 100 of the Bill which amends section 497 of the *Environmental Protection Act 1994*. Section 497 sets the limitation period for the commencement of a prosecution for an offence. This section is amended by the Bill to extend the timeframe for commencing a prosecution when an enforceable undertaking has been entered into. This is consistent with section 232 of the *Work Health and Safety Act 2011*. However, the reference to 'administering authority' rather than 'complainant' is inconsistent with the rest of section 497. Consequently, this amendment is to ensure consistency of terminology within section 497.

After clause 101

Clause 33 inserts a new clause 101A into the Bill which inserts a new **section 504 (Offences relating to Great Barrier Reef World Heritage Area)** into the *Environmental Protection Act 1994*. Chapter 10, part 3 of the *Environmental Protection Act 1994* deals with legal proceedings for offences under the Act.

The World Heritage Committee met in Qatar in June 2014 and handed down a number of recommendations regarding the conservation and management of the Great Barrier Reef World Heritage Area (GBRWHA). One of the key requests was for a progress report to be submitted, by February 2015, which would include the Reef 2050 Long-Term Sustainability Plan that the governments are preparing. The Committee will re-consider the Great Barrier Reef's world heritage status, including whether the reef warrants inclusion on the List of World Heritage in Danger, at its next annual meeting in 2015. The Queensland and Australian governments are continuing to work together to address UNESCO's requests and to provide confidence that the reef is being effectively managed and protected.

To support enhanced protection of the Great Barrier Reef World Heritage Area, this amendment includes a new section in the *Environmental Protection Act 1994* to identify to the courts that the Government's intent is for the special significance of the GBRWHA to be considered when imposing a penalty for unlawful environmental harm.

The new section essentially identifies harm in the GBRWHA to be an aggravating factor to be considered by the courts in sentencing. While the sentence imposed by the court for any particular offence is a matter for the courts, this provision will signal to the courts that harm to the GBRWHA should be considered to be a serious matter when determining the appropriate penalty.

This allows the State government to send a clear and timely message to the community, potential offenders and the courts of the importance that the State government assigns to protection of the Great Barrier Reef World Heritage Area.

This provision complements the *Penalties and Sentences Act 1992* and does not limit the court's powers under that Act or any other law. Note in particular, section 9(11) of the *Penalties and Sentences Act 1992* which states that despite the fact that the offence involved the specified aggravating factor, the sentence imposed must not be disproportionate to the gravity of the current offence.

Clause 102 (Insertion of new ch 10, pt 5)

Clause 34 amends clause 102 of the Bill which inserts the new enforceable undertaking provisions into the *Environmental Protection Act 1994*. This amendment amends **section 507 (Administering authority may accept enforceable undertakings)** of those provisions to replace subsections (6) and (7). Section 507(6) and (7) refer to what happens when the administering authority enters into an enforceable undertaking after a prosecution has commenced but before it has ended.

However, section 507 makes no reference to the fact that an enforceable undertaking would usually be entered into prior to a prosecution being brought. The wording of subsection (6) and (7) has caused confusion about this aspect of enforceable undertakings.

Consequently, section 507(6) and (7) are amended to make it clear that an enforceable undertaking can be entered into at any time up until proceedings are commenced as well.

Clause 102 (Insertion of new ch 10, pt 5)

Clause 35 amends clause 102 of the Bill which inserts the new enforceable undertaking provisions into the *Environmental Protection Act 1994*. This amendment omits the existing section 510 of those provisions and inserts a new **section 510 (Amending enforceable undertaking—with agreement)**. The previous section 510 is retained (but amended) as section 513 of these amendments (see below). The new section 510 allows for the amendment of an enforceable undertaking with the agreement of the person who made the undertaking. This may be necessary to fix issues with the undertaking where circumstances change.

Clause 102 (Insertion of new ch 10, pt 5)

Clause 36 amends clause 102 of the Bill which inserts the new enforceable undertaking provisions into the *Environmental Protection Act 1994*. This amendment inserts a new **section 511 (Amending enforcement undertaking—clerical or formal errors)**. This new section is necessary to enable errors in the undertaking to be fixed providing those errors do not affect the interests of any person. For example, this power could be used to correct the name of an Act or to correct the contact information for a person.

Clause 102 (Insertion of new ch 10, pt 5)

Clause 37 amends clause 102 of the Bill which inserts the new enforceable undertaking provisions into the *Environmental Protection Act 1994*. This amendment inserts a new **section 512 (Amending or suspending an enforceable undertaking—after show cause process)**. The department's experience with restraint orders has been that it is often necessary to make minor variations to the actions being undertaken over time. Consequently, to avoid the need for constant Court review, a power to amend, vary and suspend the enforceable undertaking is proposed.

The power could only be exercised on particular grounds, such as where a mistake has been made or where further environmental harm is being caused. These grounds are similar to the grounds for the administering authority to amend an environmental authority (see in particular, section 215(2)(c), (d), (f), and (j)).

To accompany this new power, provisions for natural justice, review and appeal for the decision to amend, vary or suspend the undertaking are also included. These provisions are based on sections 216 to 220 of the *Environmental Protection Act 1994*. Unless the amendment or suspension has the written agreement of the person making the undertaking, the administering authority must give the person making the undertaking a written notice stating:

- the action the administering authority proposes to take;
- if the proposed action is an amendment—the proposed amendment;
- if the proposed action is suspension—the period of the suspension;
- the grounds for the proposed action;
- the facts and circumstances that are the basis for the grounds; and

- that the person making the undertaking may make written representations to show why the proposed action should not be taken.

The person making the undertaking must have at least 20 business days to make written representations. The administering authority must consider any written representation and, if after doing so, still believes a ground exists to take the proposed action, it may take the proposed action. If the administering authority decides not to take the proposed action, it must give the person making the undertaking written notice of the decision. If it decides to take the proposed action, it must give an information notice. The giving of an information notice enlivens the review and appeal rights in chapter 11, part 3 of the *Environmental Protection Act 1994*.

Clause 102 (Insertion of new ch 10, pt 5)

Clause 38 amends clause 102 of the Bill which inserts the new enforceable undertaking provisions into the *Environmental Protection Act 1994*. This amendment inserts a new **section 513 (Contravention of enforceable undertaking)**. This amendment is to include a new offence provision for contravening an enforceable undertaking. The offence is modelled on section 219 of the *Work Health and Safety Act 2011*. If a person wilfully contravenes an undertaking, the maximum penalty is 6250 penalty units or 5 years imprisonment. If a person non-wilfully contravenes an undertaking, the maximum penalty is 4500 penalty units. This is the same as the offence of not complying with an environmental protection order (see section 361 of the *Environmental Protection Act 1994*, as amended by clause 72 of this Bill). This penalty is justified because contravening an undertaking is a serious matter, and the equivalent of contravening an environmental protection order.

In a proceeding for a wilful contravention of an enforceable undertaking, if the court is not satisfied that the defendant is guilty of the wilful offence, it may find the defendant guilty of the non-wilful offence.

Section 510 also provides for the administering authority to enforce an enforceable undertaking via an application to a Magistrates Court.

However, it is not clear that the administering authority may initiate a prosecution without seeking a declaration by the Court that the undertaking has not been complied with. It would be duplicative if this was required, as it would require both the administering authority and the alleged offender to appear before the Court twice – once for the declaration, and once for the prosecution.

Consequently, this amendment also clarifies subsection (2) to make this clear.

In addition, section 510(3) refers to the Court making an order directing that the offender pay certain costs to the State. This does not take into account that the administering authority can be a local government. Consequently, this amendment also corrects this error so that the Court order for a person to pay costs enables payment of those costs to the entity bringing the action – i.e. either the State or a local government.

After clause 106

Clause 39 inserts a new clause 106 into the Bill which amends **section 713 (Continued effect to make payment)** of the *Environmental Protection Act 1994*. This clause provides that for an environmental offset condition for an authority issued prior to commencement of the *Environmental Offsets Act 2014*, a monetary payment required as a result of an environmental offset condition is to be made to the offset account rather than an environmental offset trust.

Clause 107 (Insertion of new ch 13, pt 23)

Clause 40 amends clause 107 of the Bill which insert the transitional provisions for part 1 of the amendments to the *Environmental Protection Act 1994*. This amendment corrects a drafting error in the heading of division 2.

Clause 108 (Amendment of sch 4 (Dictionary))

Clause 41 amends clause 108 of the Bill which amends the Dictionary to the *Environmental Protection Act 1994* to correct a drafting error.

Clause 108 (Amendment of sch 4 (Dictionary))

Clause 42 amends clause 108 of the Bill which amends section the Dictionary to the *Environmental Protection Act 1994*. This amendment inserts a new definition of "Great Barrier Reef World Heritage Area" to support the amendments made to section17 and the insertion of a new section 504 by this Bill.

Note: the World Heritage list is kept at
http://www.environment.gov.au/heritage/places/world-heritage-list

Clause 123 (Amendment of s 320A (Application of div 2))

Clause 43 amends clause 123 of the Bill which amends section 320A of the *Environmental Protection Act 1994*. The amendments to section 320A and the new sections 320DA and 320DB were intended to replace the previous duty of owners, occupiers and local governments to notify the administering authority in relation to contaminated land.

However, section 320A has been drafted too broadly for the purposes for which it was intended. Consequently, this amendment deletes clause 123(1) and (2) to restrict the duty to only apply to owners, occupiers, auditors and local governments (i.e. those entities which have some connection to the land.

Clause 123 (Amendment of s 320A (Application of div 2))

Clause 44 amends clause 123 of the Bill which amends section 320A of the *Environmental Protection Act 1994*. This amendment corrects subclause numbering as a result of the other amendments to section 320A.

Clause 123 (Amendment of s 320A (Application of div 2))

Clause 45 amends clause 123 of the Bill which amends section 320A of the *Environmental Protection Act 1994*. The amendments to section 320A and the new sections 320DA and 320DB were intended to replace the previous duty of owners, occupiers and local governments to notify the administering authority in relation to contaminated land.

However, section 320A has been drafted too broadly for the purposes for which it was intended. Consequently, this amendment replaces section 320A(1A)(b) to restrict the duty to:

- ensure that owners, occupiers and auditors also have a duty to notify the administering authority about notifiable activities within 20 business days; and
- where the harm is linked to land being contaminated by a contaminant that the owner, occupier, or auditor knows is a hazardous contaminant.

Clause 123 (Amendment of s 320A (Application of div 2))

Clause 46 amends clause 123 of the Bill which amends section 320A of the *Environmental Protection Act 1994*. The amendments to section 320A and the new sections 320DA and 320DB were intended to replace the previous duty of owners, occupiers and local governments to notify the administering authority in relation to contaminated land.

However, section 320A has been drafted too broadly for the purposes for which it was intended. Consequently, this amendment replaces section 320A(1B)(b)(i) to restrict the duty to notify to where the harm is linked to land being contaminated by a contaminant that the local government knows is a hazardous contaminant.

Clause 123 (Amendment of s 320A (Application of div 2))

Clause 47 amends clause 123 of the Bill which amends section 320A of the *Environmental Protection Act 1994*. This amendment corrects subclause numbering as a result of the other amendments to section 320A.

Clause 125 (Insertion of new ch 7, pt 1, div 2, sdivs 3A and 3B)

Clause 48 amends clause 125 of the Bill which inserts new subdivisions 3A and 3B into the *Environmental Protection Act 1994* about the duty to notify for contaminated land. This amendment amends **section 320DA (Duty of owner, occupier or auditor to notify administering authority)** which sets out the duty of an owner, occupier or auditor to notify in relation to contaminated land. The intention was that a person with this duty must notify of contamination causing serious or material environmental harm within 24 hours, but would have 20 business days to notify the administering authority about a notifiable activity. However, this has not been reflected in the drafting. Consequently, this amendment ensures that there are two timeframes for notification:

1. 24 hours to notify about contamination causing serious or material environmental harm; and
2. 20 business days to notify the administering authority about a notifiable activity.

Clause 135 (Replacement of ch 7, pt 8 (Contaminated land))

Clause 49 amends clause 135 of the Bill which replaces chapter 7, part 8 which contains the contaminated land provisions for the *Environmental Protection Act 1994*. This amendment amends **section 319 (Show cause notice)** to correct a drafting error.

Clause 140 (Insertion of new ch 13, pt 23, div 3)

Clause 50 amends clause 140 of the Bill which inserts the transitional provisions for part 2 of the amendments to the *Environmental Protection Act 1994*. This amendment amends **section 736 (Particular existing applications)** which provides transitional provisions for contaminated land applications upon commencement of these provisions of the Bill. These amendments are inserting a new transitional provision specific to soil disposal permits, and consequently, the reference to soil disposal permits in this section is deleted.

Clause 140 (Insertion of new ch 13, pt 23, div 3)

Clause 51 amends clause 140 of the Bill which inserts the transitional provisions for part 2 of the amendments to the *Environmental Protection Act 1994*. This amendment **amends section 738 (Notice to purchaser)** to correct a drafting error.

Clause 140 (Insertion of new ch 13, pt 23, div 3)

Clause 52 amends clause 52 of the Bill which inserts the transitional provisions for part 2 of the amendments to the *Environmental Protection Act 1994*. This amendment inserts a new transitional provision at **section 739 (Disposal permits)**. This provision provides for transitional arrangements for soil disposal permits.

Clause 135 of the Bill replaces the entirety of chapter 7, part 8 which contains the contaminated land provisions. However, due to the need for administrative arrangements to be put in place, the replacement of chapter 7 part 8 will need to commence before the soil disposal permits are replaced.

Soil disposal permits are dealt with under sections 424 and 425 of the pre-amendment *Environmental Protection Act 1994*. These sections have not been replaced in the Bill because soil disposal permits are being phased out and replaced with waste tracking arrangements.

Consequently, this transitional provision ensures that, despite clause 135 effectively omitting sections 424 and 425 of the pre-amendment *Environmental Protection Act 1994*, these sections continue in force until such time as the *Environmental Protection Regulation 2008* is amended to provide for waste tracking for contaminated soil. This will ensure that there is no regulatory gap while the administrative arrangements are being put into place.

Clause 141 (Amendment of sch 2 (Original decisions))

Clause 53 amends clause 141 of the Bill which amends schedule 2 of the *Environmental Protection Act 1994*. Schedule 2 contains a list of original decisions for which an appeal may be brought about a decision by the administering authority. Part 2 is for appeals to the Planning and Environment Court. This amendment ensures that a decision to amend, vary or

suspend the enforceable undertaking is an original decision for an appeal to the Planning and Environment Court.

Sustainable Planning Act 2009

After clause 144

Clause 54 inserts new clauses 144A and 144B into the Bill which amend the *Sustainable Planning Act 2009*. This clause provides that for an environmental offset condition for an authority issued prior to commencement of the *Environmental Offsets Act 2014*, a monetary payment required as a result of an environmental offset condition is to be made to the offset account rather than to the Balance the Earth Trust.

Waste Reduction and Recycling Act 2011

Clause 167 (Replacement of ch 8 (Approval of resource for beneficial use))

Clause 55 amends clause 167 of the Bill which replaces chapter 8 of the *Waste Reduction and Recycling Act 2011* to bring in the new 'end of waste' framework. This amendment amends **section 155 (Purpose of chapter)** to change the term "registered code user" to "registered resource producer". The term "registered code user" has caused confusion with stakeholders as it suggests that the term refers to the resource user and not the resource producer. This was also the subject of a recommendation from the Agriculture, Resource and Environment Committee.

Clause 167 (Replacement of ch 8 (Approval of resource for beneficial use))

Clause 56 amends clause 167 of the Bill which replaces chapter 8 of the *Waste Reduction and Recycling Act 2011* to bring in the new 'end of waste' framework. This amendment amends **section 156 (Definitions for ch 8)** to change the term "registered code user" to "registered resource producer". The term "registered code user" has caused confusion with stakeholders as it suggests that the term refers to the resource user and not the resource producer. This was also the subject of a recommendation from the Agriculture, Resource and Environment Committee.

Clause 167 (Replacement of ch 8 (Approval of resource for beneficial use))

Clause 57 amends clause 167 of the Bill which replaces chapter 8 of the *Waste Reduction and Recycling Act 2011* to bring in the new 'end of waste' framework. This amendment amends **section 157 (Effect of operating under end of waste code if unregistered)** to remove the reference to a person to uses a resource. Section 157 ensures that a person cannot obtain the benefit of a code unless the person is registered.

However, while producers under the code should be registered, users of a resource under an end of waste code should not have to become registered for the material to be classified as a resource instead of waste.

End of waste codes are designed to include standards that will specify a particular quality that waste must meet before it can be deemed a resource. In prescribing this standard, the legislation requires that there must be consideration of the proposed use of the resource and whether the proposed use may cause environmental harm. Since the code development process requires consideration of the use, there should be no further regulation of users. Once the resource has met the standards of the code at the point of transfer, the regulation of the resource should be the same as for a resource that is not derived from a waste. Therefore there is no need for further regulation under the end of waste code.

Therefore, section 157 is amended to only apply to persons that sell or give away a resource, and not apply to persons that use a resource.

This amendment also amends **section 158 (Compliance with end of waste code)** to remove the reference to a person that uses a resource. Section 158 makes it an offence for a registered code user to contravene the requirements of the end of waste code. However, users of a resource should not be required to comply with the requirements of an end of waste code. Consequently, for similar reasons to those outlined about for section 157, section 158 is amended to only apply to persons that sell or give away a resource, and not apply to persons that use a resource.

In addition, the above sections and **section 159 (Chief executive may made end of waste codes and gran end of waste approvals)** are amended to change the term "registered code user" to "registered resource producer". The term "registered code user" has caused confusion with stakeholders as it suggests that the term refers to the resource user and not the resource producer. This was also the subject of a recommendation from the Agriculture, Resource and Environment Committee.

Clause 167 (Replacement of ch 8 (Approval of resource for beneficial use))

Clause 58 amends clause 167 of the Bill which replaces chapter 8 of the *Waste Reduction and Recycling Act 2011* to bring in the new 'end of waste' framework. This amendment amends **section 160 (Public notice inviting submissions about potential end of waste codes)** to ensure that the chief executive must invite submissions on at least an annual basis.

Section 160 allows the chief executive to invite the public to make submissions about whether there is a particular waste or resource for which an end of waste code should be prepared.

As a result of submissions to the Agriculture, Resources and Environment Committee, the government agreed that the chief executive should have a legislative requirement to invite submissions on end of waste codes on a regular (i.e. annual) basis. This will provide stakeholders with a certainty that they will have the opportunity to make suggestions to the department on wastes or resources for which an end of waste code should be made.

Clause 167 (Replacement of ch 8 (Approval of resource for beneficial use))

Clause 59 amends clause 167 of the Bill which replaces chapter 8 of the *Waste Reduction and Recycling Act 2011* to bring in the new 'end of waste' framework. This amendment amends **section 171 (Cancellation or suspension of end of waste code)** to state that suspension or

cancellation is triggered where the chief executive is satisfied that the end of waste code was made on the basis of:

(i) a miscalculation of the characteristics of the resource; and
(ii) the potential of the resource to cause serious environmental harm or material environmental harm due to those characteristics.

Section 171 allows for the cancellation or suspension of an end of waste code in particular circumstances. One of these circumstances (subsection (b)) is where the use of a resource under the code is causing serious or material environmental harm.

The intention of subsection (b) was to enable the chief executive to cancel or suspend a code where satisfied that, when making the code, the characteristics of the resource (e.g. its physical state and its components and their concentrations) were mistaken. If the code was made on the basis of an assessment of the potential of the resource with these mistaken characteristics to cause serious or material environmental harm, there is the possibility that serious or material environmental harm may occur from the use of the resource.

This amendment therefore replaces subsection (b) so that cancellation or suspension can only be triggered where it becomes apparent that the code was made on the basis of a miscalculation of the characteristics of the resource and the potential of the resource to cause serious or material environmental harm due to those characteristics.

Note: The term 'characteristics of the resource' is used in section 166 of the pre-amendment *Waste Reduction and Recycling Act 2011*.

Clause 167 (Replacement of ch 8 (Approval of resource for beneficial use))

Clause 60 amends clause 167 of the Bill which replaces chapter 8 of the *Waste Reduction and Recycling Act 2011* to bring in the new 'end of waste' framework. This amendment amends **section 172 (Procedure for amending, cancelling or suspending end of waste code)** to change the term "registered code user" to "registered resource producer". The term "registered code user" has caused confusion with stakeholders as it suggests that the term refers to the resource user and not the resource producer. This was also the subject of a recommendation from the Agriculture, Resource and Environment Committee.

Clause 167 (Replacement of ch 8 (Approval of resource for beneficial use))

Clause 61 amends clause 167 of the Bill which replaces chapter 8 of the *Waste Reduction and Recycling Act 2011* to bring in the new 'end of waste' framework. This amendment amends **section 172 (Procedure for amending, cancelling or suspending end of waste code)** to replace subsections (3)(f), (3)(g) and (4)(a). Section 172 provides for the procedure to the chief executive to follow before making a decision to amend, suspend or cancel an end of waste code.

Subsections (3)(f) and (3)(g) are amended to remove the words 'why' and 'should not be taken'. As a result of submissions to the Agriculture, Resources and Environment Committee, the government agreed that stakeholders should be able to provide a submission in support of the proposed action as well as against. This would more accurately capture the views of stakeholders, rather than just canvasing those who are against the proposed action.

In addition, these subsections and subsection (4)(a) are amended to change the term "registered code user" to "registered resource producer". The term "registered code user" has caused confusion with stakeholders as it suggests that the term refers to the resource user and not the resource producer. This was also the subject of a recommendation from the Agriculture, Resource and Environment Committee.

Minor amendments have also been made to subsection (4) to improve drafting consistency.

Clause 167 (Replacement of ch 8 (Approval of resource for beneficial use))

Clause 62 amends clause 167 of the Bill which replaces chapter 8 of the *Waste Reduction and Recycling Act 2011* to bring in the new 'end of waste' framework. This amendment amends **section 172 (Procedure for amending, cancelling or suspending end of waste code)** to insert a new subsection (5)(b)(iv) and replace subsections (5)(c), (6) and (7). Section 172 provides for the procedure to the chief executive to follow before making a decision to amend, suspend or cancel an end of waste code.

Subsection (5)(b)(iv) is inserted to include an additional requirement for the chief executive to consider advice, comment or information provided by a technical advisory panel (if any). As a result of submissions to the Agriculture, Resources and Environment Committee, the government agreed that it should be made clear that the chief executive can take advice from a technical advisory panel with respect to an amendment of an end of waste code. Section 173G states that a technical advisory panel can be established to provide advice, information or comment about an amendment of an end of waste code. It is not clear however that that the chief executive is required to consider that advice, information or comment when deciding whether to amend the code. This amendment makes that clear.

Subsection (5)(c) is replaced without amendment.

Subsections (6) and (7) are amended to change the term "registered code user" to "registered resource producer". The term "registered code user" has caused confusion with stakeholders as it suggests that the term refers to the resource user and not the resource producer. This was also the subject of a recommendation from the Agriculture, Resource and Environment Committee.

Clause 167 (Replacement of ch 8 (Approval of resource for beneficial use))

Clause 63 amends clause 167 of the Bill which replaces chapter 8 of the *Waste Reduction and Recycling Act 2011* to bring in the new 'end of waste' framework. This amendment amends **section 173A (Minor amendment of end of waste code)** and **section 173B (Registration of end of waste code users)** to change the term "registered code user" to "registered resource producer". The term "registered code user" has caused confusion with stakeholders as it suggests that the term refers to the resource user and not the resource producer. This was also the subject of a recommendation from the Agriculture, Resource and Environment Committee.

Clause 167 (Replacement of ch 8 (Approval of resource for beneficial use))

Clause 64 amends clause 167 of the Bill which replaces chapter 8 of the *Waste Reduction and Recycling Act 2011* to bring in the new 'end of waste' framework. This amendment amends

section 173C (Cancellation or suspension of registration) and **section 173D (Procedure for cancelling or suspending registration)** to change the term "registered code user" to "registered resource producer". The term "registered code user" has caused confusion with stakeholders as it suggests that the term refers to the resource user and not the resource producer. This was also the subject of a recommendation from the Agriculture, Resource and Environment Committee.

Clause 167 (Replacement of ch 8 (Approval of resource for beneficial use))

Clause 65 amends clause 167 of the Bill which replaces chapter 8 of the *Waste Reduction and Recycling Act 2011* to bring in the new 'end of waste' framework. This amendment amends **section 173D (Procedure for cancelling or suspending registration)** to change the term "registered code user" to "registered resource producer". The term "registered code user" has caused confusion with stakeholders as it suggests that the term refers to the resource user and not the resource producer. This was also the subject of a recommendation from the Agriculture, Resource and Environment Committee.

Clause 167 (Replacement of ch 8 (Approval of resource for beneficial use))

Clause 66 amends clause 167 of the Bill which replaces chapter 8 of the *Waste Reduction and Recycling Act 2011* to bring in the new 'end of waste' framework. This amendment amends **section 173D (Procedure for cancelling or suspending registration)**, **section 173E (Particular circumstances when end of waste approval lapses)** and **section 173F (Register of registered code users)** to change the term "registered code user" to "registered resource producer". The term "registered code user" has caused confusion with stakeholders as it suggests that the term refers to the resource user and not the resource producer. This was also the subject of a recommendation from the Agriculture, Resource and Environment Committee.

Clause 167 (Replacement of ch 8 (Approval of resource for beneficial use))

Clause 67 amends clause 167 of the Bill which replaces chapter 8 of the *Waste Reduction and Recycling Act 2011* to bring in the new 'end of waste' framework. This amendment amends **section 173J (Chief executive may require additional information or documents)** to correct a drafting error.

Clause 167 (Replacement of ch 8 (Approval of resource for beneficial use))

Clause 68 amends clause 167 of the Bill which replaces chapter 8 of the *Waste Reduction and Recycling Act 2011* to bring in the new 'end of waste' framework. This amendment amends **section 173N (Conditions of end of waste approval)** to insert a new subsection to specify that, despite subsections (1) and (2), a condition may only impose obligations on a holder of the approval, and not on a user of the resource.

Section 173N specifies the conditions that can be imposed on an approval. However, section 173P requires the holder to require subcontractors and employees to comply with the approval. Submissions to the Agriculture, Resources and Environment Committee raised concerns that this could require the holder to be responsible for the actions of the resource user. Consequently, this amendment makes it clear that the conditions of the approval cannot impose obligations on the user of the resource.

Clause 167 (Replacement of ch 8 (Approval of resource for beneficial use))

Clause 69 amends clause 167 of the Bill which replaces chapter 8 of the *Waste Reduction and Recycling Act 2011* to bring in the new 'end of waste' framework. This amendment deletes **section 173Q (Holder of end of waste approval responsible for ensuring conditions complied with)**. Section 173Q required the holder of an end of waste approval to ensure that every person acting under that approval complies with the conditions of the approval.

As a result of submissions to the Agriculture, Resources and Environment Committee, the government agreed that this section should be deleted as it acts as a disincentive to applying for an end of waste approval. It makes the holder of an approval responsible for other persons acting under the approval.

Section 173P will, as recommended by the Agriculture, Resources and Environment Committee, be retained as originally drafted. This provides the ability for action to be taken directly against any person acting under the approval if the person does not comply with the conditions of the approval.

Extending the liability for the actions of another person acting under the approval to the holder would not generally apply to other production activities using non-waste inputs to production. It would therefore act as a barrier to the uptake of using waste as a resource and is inconsistent with the goal of encouraging the use of wastes as a resource for production. Consequently, section 173Q is removed from the Bill.

This section also inserts a new **section 173Q (Extending end of waste approval)** so that an end of waste approval holder may, not less than one month before the approval ends, apply to the chief executive to extend the approval.

As a result of submissions to the Agriculture, Resources and Environment Committee, the government considered that a new provision should be inserted to enable end of waste approvals to be extended. The holder of an end of waste approval can make an application requesting the extension of the approval. To ensure that the approval continues to meet environmental and waste management objectives, the chief executive must consider the criteria in section 173L before granting an extension.

Approvals can only be extended once. This is because approvals enable trials of waste technology to be conducted where the trial would otherwise require an environmental authority for a waste management environmentally relevant activity (ERA). Allowing unlimited extensions of the end of waste approval could result in the unintended consequence that operators would seek to extend trials for lengthy periods to avoid being licensed under the appropriate ERA.

Note: waste management ERA is defined in the Dictionary to the *Waste Reduction and Recycling Act 2011*.

Clause 167 (Replacement of ch 8 (Approval of resource for beneficial use))

Clause 70 amends clause 167 of the Bill which replaces chapter 8 of the *Waste Reduction and Recycling Act 2011* to bring in the new 'end of waste' framework. This amendment amends

section 173X (Cancellation or suspension of an end of waste approval) to insert the words 'or likely to be a future use' after the words 'no longer a use'.

Section 173X provides the criteria for when an end of waste approval can be cancelled or suspended. This includes where there is no longer a use for a particular resource under the approval (subsection (1)(a)).

As a result of submissions to the Agriculture, Resources and Environment Committee, the government agreed that section 173X(1)(a) should be amended because some uses of a resource may be temporal and thus that 'there is no longer a use for a particular resource under the approval' should not be a ground for the cancellation or suspension of an end of waste approval. This amendment ensures that the likelihood of a future use is also considered.

In addition, section 173X(1)(b) is amended to limit 'serious environmental harm' and 'material environmental harm' to where that harm is unlawful. This is because an end of waste approval or another environmental approval under the *Environmental Protection Act 1994* may authorise a degree of environmental harm.

Note: unlawful environmental harm is defined by reference to section 493A of the *Environmental Protection Act 1994*. It sets out where an authority or other approval permits environmental harm, or where the general environmental duty operates as a defence for unlicensed environmental.

Clause 170 (Replacement of ch 16 (Repeal and amendment of other legislation))

Clause 71 amends clause 170 of the Bill which inserts the transitional provisions for the amendments to the *Waste Reduction and Recycling Act 2011*. This amendment amends **section 303 (Existing general approvals)** to insert additional subsections to provide that, if a person has registered under a general approval that has ended under subsection (5), that person is taken to be a registered resource produce from the day that the general approval ends.

Under the transitional provisions in section 303, existing general approvals continue for their term, unless an end of waste code relating to the particular waste or resource covered by the general approval is made, in which case the general approval ends. This is because the end of waste code can be considered to replace the general approval.

Some existing general approvals contain a condition requiring producers to register in order to have the benefit of the approval. If a person has already registered under a general approval, they should not be required to register to become a 'registered resource producer' when an end of waste code replaces the general approval. All other users of existing general approvals will be required to register to become a registered resource producer. This will enable the department to identify all users of a code.

This transitional provision is also amended to ensure that the offence of not complying with a code (section 158 of the *Waste Reduction and Recycling Act 2011* as inserted by this Bill) does not apply to a person to whom the transitional provision applies within 12 months of the end of waste code taking effect. However, during the transitional period, the person will still be required to comply with the conditions of the general approval.

Section 303 applies to a person operating under a general approval prior to commencement of the Bill. For those users of existing general approvals that will be required to register to become a 'registered resource producers' (see amendment referred to above), there should be a 12 month grace period from the offence under section 158 of the amended *Waste Reduction and Recycling Act 2011* for non-compliance with the requirements of the end of waste code referred to in section 303(4). The offence provision under section 158 would not apply for 12 months from the day the end of waste code takes effect to a person that sells or gives away a resource under an end of waste code if that person was operating under a general approval under the former Act.

Clause 170 (Replacement of ch 16 (Repeal and amendment of other legislation))

Clause 72 amends clause 170 of the Bill which inserts the transitional provisions for the amendments to the *Waste Reduction and Recycling Act 2011*. This amendment amends **section 304 (Existing specific approvals)** to insert an additional subsection that states that, despite the replacement of chapter 8 under the amending Act, chapter 8, part 5 under the former Act continues to apply for the specific approval.

Section 304 ensures that existing specific beneficial use approvals continue in force as an end of waste approval.

However, despite the replacement of chapter 8, the provisions of chapter 8, part 5 of the former Act must continue to apply to any specific approvals that have been deemed to be end of waste approvals by virtue of section 304(2). Some current specific approvals contain conditions that are expressed to apply to a person which is not the holder of the approval (e.g. a receiver). To ensure that these conditions are still enforceable, an additional transitional provision is required because the proposed new offence provisions will apply only to the holder of an end of waste approval. Section 167 of the pre-amendment *Waste Reduction and Recycling Act 2011* will need to continue to apply if these conditions are to remain enforceable.

Clause 171 (Amendment of schedule (Dictionary))

Clause 73 amends clause 171 of the Bill which amends the Dictionary to the *Waste Reduction and Recycling Act 2011* to change the term "registered code user" to "registered resource producer". The term "registered code user" has caused confusion with stakeholders as it suggests that the term refers to the resource user and not the resource producer. This was also the subject of a recommendation from the Agriculture, Resource and Environment Committee.

Consequential and minor amendments

Schedule 1 (Consequential and minor amendments)

Clause 74 amends clause schedule 1 of the Bill, which contains minor consequential amendments for the Bill, to correct a drafting error.

Schedule 1 (Consequential and minor amendments)

Clause 75 amends clause schedule 1 of the Bill, which contains minor consequential amendments for the Bill, to correct a drafting error.

Schedule 1 (Consequential and minor amendments)

Clause 76 amends clause schedule 1 of the Bill, which contains minor consequential amendments for the Bill, to correct a drafting error.

Schedule 1 (Consequential and minor amendments)

Clause 77 amends clause schedule 1 of the Bill, which contains minor consequential amendments for the Bill, to change the term "registered code user" to "registered resource producer". The term "registered code user" has caused confusion with stakeholders as it suggests that the term refers to the resource user and not the resource producer. This was also the subject of a recommendation from the Agriculture, Resource and Environment Committee.

Long title

Clause 78 amends the long title to the Bill as the Bill is now amending the *Sustainable Planning Act 2009* as a result of these amendments.