

# Environmental Protection and Other Legislation Amendment Bill 2014

Amendments during consideration in detail to be moved by  
The Honourable the Minister for Environment and Heritage Protection

## 1 Clause 2 (Commencement)

Page 16, lines 9 and 10—

*omit, insert—*

- (aa) part 4, other than the following provisions—
  - (i) section 9A;
  - (ii) section 15A;
  - (iii) section 16(2), to the extent it inserts the definitions *administering agency*, *impose* and *Planning Act*;
  - (iv) section 16(3);
- (ab) the following provisions of part 5—
  - (i) section 62(1);
  - (ii) section 63;
  - (iii) section 99;
  - (iv) section 100;
  - (v) section 102;
  - (vi) section 103(5);
  - (vii) section 104;
- (a) part 5, division 3;
- (b) part 6;
- (ba) part 6A;

## 2 After clause 9

Page 19, after line 12—

*insert—*

**9A Amendment of s 5 (Relationship with particular Acts)**

Section 5(3), note, fourth dot point, 'section 972'—

*omit, insert—*

section 346B

**3 After clause 10**

Page 19, after line 23—

*insert—*

**10A Amendment of s 13 (Content of environmental offsets policy)**

Section 13(e), 'calculating'—

*omit, insert—*

determining

**4 After clause 10**

Page 19, after line 23—

*insert—*

**10B Insertion of new s 13B**

Part 5—

*insert—*

**13B What this part is about**

- (1) This part applies if an administering agency may impose an offset condition on an authority, under another Act, for an impact on a prescribed environmental matter.
- (2) This part applies despite anything to the contrary in the other Act, other than as mentioned in—
  - (a) section 5; or
  - (b) the Planning Act, section 325(1).

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

Page 20, lines 1 to 7—

*omit, insert—*

**11 Replacement of s 14 (Imposing offset condition)**

Section 14—

*omit, insert—*

**14 Imposing offset condition**

- (1) The administering agency may impose the offset condition only if satisfied—
  - (a) the prescribed activity will, or is likely to, have a significant residual impact on a prescribed environmental matter; and
  - (b) all reasonable on-site mitigation measures for the prescribed activity have been, or will be, undertaken.
- (2) When making a decision under the other Act about whether to impose an offset condition, the administering agency must consider any offset condition that has been imposed on an authority under another Act for—
  - (a) the same, or substantially the same, impact; and
  - (b) the same, or substantially the same, prescribed environmental matter.

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

Page 20, lines 8 to 29, page 21, lines 1 to 35, and page 22, lines 1 to 4—

*omit, insert—*

## **12 Replacement of s 15 (Restriction on imposition of offset condition)**

Section 15—

*omit, insert—*

### **15 Restriction on imposition of offset condition**

- (1) An administering agency may impose an offset condition on an authority only if—
  - (a) the same, or substantially the same, impact has not been assessed under a relevant Commonwealth Act; and
  - (b) the same, or substantially the same, prescribed environmental matter has not been assessed under a relevant Commonwealth Act.
- (2) Subsection (1) applies whether or not the assessment resulted in the imposition of an offset condition.
- (3) However, subsection (1) does not apply if the prescribed environmental matter to which the condition relates is a protected area.
- (4) An administering agency that is a local government may impose an offset condition on an authority only for the following—
  - (a) a matter of local environmental significance;
  - (b) another prescribed environmental matter that is further prescribed by regulation as relevant for this subsection.
- (5) In this section—

***relevant Commonwealth Act*** means—

- (a) the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth) as a controlled action; or
- (b) the *Great Barrier Reef Marine Park Act 1975* (Cwlth); or
- (c) another Commonwealth Act prescribed by regulation.

**7 Clause 13 (Insertion of new s 15A)**

Page 22, lines 5 to 31, and page 23, lines 1 to 19—

*omit.*

**8 After clause 13**

Page 23, after line 19—

*insert—*

**13 Amendment of pt 6 hdg (Requirements about offset conditions)**

Part 6, heading, ‘offset conditions’—

*omit, insert—*

**environmental offsets**

**9 After clause 13**

Page 23, after line 19—

*insert—*

**13A Amendment of s 16 (Conditions that apply under this Act to authority)**

Section 16(1) to (3)—

*omit, insert—*

- (1) This section applies if an offset condition is imposed on an authority, under another Act, for a significant residual impact of a

prescribed activity on a prescribed environmental matter.

- (2) Sections 19B, 22, 24 and 25 state further conditions that, under this Act, are imposed on the authority.
- (3) A further condition mentioned in subsection (2) is a *deemed condition* of the authority.

## 10 After clause 13

Page 23, after line 19—

*insert—*

### 13B Replacement of ss 18 and 19

Sections 18 and 19—

*omit, insert—*

### 18 Electing how to deliver environmental offset

- (1) This section applies if an administering agency may impose or has imposed on an authority, under another Act, an offset condition for the significant residual impact of a prescribed activity on a prescribed environmental matter.
- (2) An entity may, by notice in the approved form given to the administering agency, elect to deliver an environmental offset for the prescribed activity, or for a stage of the prescribed activity, by—
  - (a) a proponent-driven offset; or
  - (b) a financial settlement offset; or
  - (c) a combination of a proponent-driven offset and a financial settlement offset.
- (3) A notice of election that involves a proponent-driven offset must be accompanied by a plan (an *offset delivery*

*plan*) about how the entity will undertake the offset.

- (4) The offset delivery plan must—
- (a) describe how an environmental offset will be undertaken and the conservation outcome will be achieved; and
  - (b) state that the entity, and any other entity that owns land on which the environmental offset will be undertaken, agree to the offset being undertaken; and
  - (c) be signed by the entities mentioned in paragraph (b); and
  - (d) satisfy each other requirement prescribed by regulation for this section.
- (5) For subsection (4)(a), the offset delivery plan must—
- (a) effectively account for and manage the risks of the environmental offset failing to achieve the conservation outcome; and
  - (b) ensure the environmental offset provides benefits in relation to the prescribed environmental matter in addition to any other benefit provided under a requirement of, or of an authority under, an Act; and

*Example for paragraph (b)—*

Ensuring an environmental offset in relation to the management of a pest provides benefits in addition to a landowner's obligation under the *Land Protection (Pest and Stock Route Management) Act 2002*, section 77 to take reasonable steps to keep land free of particular pests.

- (c) have transparent governance arrangements that can be readily measured, monitored, audited and enforced; and
- (d) ensure the environmental offset is of a size and scale proportionate to the significant residual impact on the prescribed environmental matter.

## **19 Agreed delivery arrangements**

- (1) After receiving a notice of election, the administering agency must consider the election and any offset delivery plan, including by considering—
  - (a) each relevant environmental offsets policy; and
  - (b) any other matter prescribed by regulation for this section.
- (2) The administering agency must decide whether it is appropriate to deliver the environmental offset in the way stated in the notice of election, and any offset delivery plan, or whether the offset should be delivered in a different way.
- (3) The administering agency must give the entity a notice that states—
  - (a) the way in which the environmental offset is required to be delivered; and
  - (b) the entity is required to enter into an agreed delivery arrangement within a stated reasonable period; and
  - (c) that the entity may apply for a review of the decision; and
  - (d) how and when the entity may apply for a review of the decision.



- (4) An *agreed delivery arrangement* is an agreement between an entity and the administering agency about the entity's delivery of an environmental offset, with reference to any offset delivery plan.
- (5) An agreed delivery arrangement may be entered into before or after the authority is granted.

*Note—*

However, see section 19A for when an agreed delivery arrangement is entered into before the authority is granted.

- (6) If the administering agency fails to give notice under subsection (3) within 40 business days after receiving the notice of election, the entity may apply for a review of the failure to give the notice, in the way provided for under subsection (8).
- (7) The entity and administering agency may amend either or both of the following—
  - (a) the agreed delivery arrangement;
  - (b) an offset delivery plan;by entering into another agreed delivery arrangement before the entity starts the relevant prescribed activity, or the relevant stage of a prescribed activity.
- (8) A regulation may provide for—
  - (a) a review of a decision to require an environmental offset to be delivered in a way that differs from the way stated in a notice of election; or
  - (b) a review of a failure to give a notice under subsection (3) within 40 business days after the administering agency receives the notice of election; or

- (c) what happens if the entity and administering agency do not enter into an agreed delivery arrangement within the stated reasonable period; or
- (d) a dispute resolution process.

**11 After clause 13**

Page 23, after line 19—

*insert—*

**13C Insertion of new s 19A**

Part 6, division 2—

*insert—*

**19A Agreed delivery arrangement before authority granted**

- (1) This section applies if an entity enters into an agreed delivery arrangement (the *early arrangement*) under section 19 before an authority is granted.
- (2) The entity—
  - (a) may start to deliver a proponent-driven offset before the authority is granted; but
  - (b) must not pay any amount under a financial settlement offset until after the authority is granted.
- (3) If, after the early arrangement is entered into, but not more than 10 business days after the authority for the prescribed activity is granted—
  - (a) there is a change in the way the prescribed activity is proposed to be carried out that will result in a change to the impact; and

(b) the administering agency decides that the impact that is counterbalanced under the early arrangement differs from the impact likely to arise from the prescribed activity;

the administering agency must give the entity a notice under subsection (4).

(4) The administering agency's notice must state—

(a) the environmental offset is required to be delivered in a way that differs from the way stated in the early arrangement; and

(b) the entity is required to enter into another agreed delivery arrangement to that effect, within a stated reasonable period; and

(c) the reasons for the decision; and

(d) that the entity may apply for a review of the decision; and

(e) how and when the entity may apply for a review of the decision.

(5) A regulation may provide for a review of the decision to require the environmental offset to be delivered in a way that differs from the way stated in the early arrangement.

## **12 After clause 13**

Page 23, after line 19—

*insert—*

### **13D Insertion of new s 19B**

Part 6, division 2—

*insert—*

**19B Deemed condition for agreed delivery arrangement**

- (1) This section applies to an authority, granted by an administering agency under another Act, to carry out a prescribed activity to which an offset condition relates.
- (2) It is a condition of the authority that the authority holder must have entered into an agreed delivery arrangement with the administering agency, before starting—
  - (a) any works that impact on the prescribed environmental matter to which the offset condition relates; or
  - (b) if the authority allows the prescribed activity to be carried out in stages—any works for the stage that impact on the prescribed environmental matter to which the offset condition relates.

**13 After clause 13**

Page 23, after line 19—

*insert—*

**13E Replacement of s 20 (Amending agreement after prescribed activity starts)**

Section 20—

*omit, insert—*

**20 Amending agreement after prescribed activity starts**

- (1) This section applies if—
  - (a) an administering agency and an authority holder have entered into an agreed delivery arrangement that involves a proponent-driven offset; and

- (b) the authority holder has started the prescribed activity to which the authority relates.
- (2) The authority holder and administering agency may, by entering into another agreed delivery arrangement, amend either or both of the following—
  - (a) the agreed delivery arrangement;
  - (b) an offset delivery plan about the delivery of the proponent-driven offset.
- (3) In considering whether to enter into a further agreed delivery arrangement, the administering agency must consider the matters mentioned in section 19(1)(a) and (b).
- (4) An offset delivery plan amended under this section must comply with section 18(4) and (5).

#### **14 After clause 13**

Page 23, after line 19—

*insert—*

#### **13F Replacement of s 21 (What is a *proponent-driven offset*)**

Section 21—

*omit, insert—*

#### **21 What is a *proponent-driven offset***

A *proponent-driven offset* is an environmental offset that an entity undertakes directly or indirectly.

*Example of an entity indirectly undertaking an environmental offset—*

An entity may deliver an environmental offset by contracting with a broker to carry out activities on the entity's behalf.

**15 After clause 13**

Page 23, after line 19—

*insert—*

**13G Amendment of s 23 (What is a *financial settlement offset*)**

Section 23—

*insert—*

- (2) The amount of the payment is—
  - (a) if the administering agency is a local government—an amount up to the amount determined by the local government in accordance with the environmental offsets policy; or
  - (b) for any other administering agency—an amount determined by the administering agency in accordance with the environmental offsets policy.

**16 After clause 13**

Page 23, after line 19—

*insert—*

**13H Amendment of s 24 (Requirements for financial settlement offsets)**

Section 24(3)—

*omit, insert—*

- (3) The authority holder may pay the amount required by the agreed delivery arrangement for a stage of the prescribed activity only if the authority allows the prescribed activity to be carried out in stages.

**17 Clause 14 (Insertion of new pt 6A)**

Page 23, lines 25 to 30, page 24, lines 1 to 33, and page 25, lines 1 to 6—

*omit, insert—*

**25A Removing duplicate conditions**

- (1) This section applies if, after an offset condition is imposed, any of the following offset conditions is imposed—
  - (a) a Commonwealth condition for an area that is not a protected area;
  - (b) a State condition;
  - (c) a local government condition.
- (2) The authority holder may, at any time and free of charge, apply for an amendment of the authority to remove one of the conditions on the basis that the conditions are duplicate conditions.
- (3) The authority holder must apply, in the approved form, to—
  - (a) if one of the offset conditions is a Commonwealth condition mentioned in subsection (1)(a)—the administering agency that imposed the offset condition that is not a Commonwealth condition, to remove the offset condition imposed by that agency; or
  - (b) otherwise—
    - (i) the administering agency prescribed by regulation, to remove the condition imposed by that agency; or
    - (ii) if an administering agency is not prescribed by regulation—either administering agency that imposed an offset condition, to

remove the offset condition imposed by that agency.

- (4) The administering agency must decide the application within 10 business days after receiving the application.
- (5) The administering agency may decide to amend the authority if satisfied that the conditions are duplicate conditions.
- (6) If the administering agency decides to amend the authority by removing the condition, the agency may also make any other amendments that the agency considers—
  - (a) relate to the removal of the condition; and
  - (b) are necessary or desirable.
- (7) If the administering agency decides to amend the authority, the agency must, within 10 days after making the decision—
  - (a) give the amended authority to the authority holder; and
  - (b) include a copy of the amended authority in the register kept under section 90.
- (8) If the administering agency decides not to amend the authority, the administering agency must give the authority holder a notice that states—
  - (a) the decision and the reasons for the decision; and
  - (b) that the holder may apply for a review of the decision; and
  - (c) how and when the holder may apply for a review of the decision.



- (9) A regulation may provide for a review of the decision.
- (10) Any provisions in the Act under which the offset condition was imposed about amending conditions of an authority, other than a provision mentioned in section 5, do not apply to an offset condition that is amended under this section.
- (11) In this section—
  - duplicate conditions* are offset conditions that relate to—
    - (a) the same, or substantially the same, impact; and
    - (b) the same, or substantially the same, prescribed environmental matter.

**18 After clause 15**

Page 25, after line 10—

*insert—*

**15A Insertion of new ss 95A and 95B**

Part 13—

*insert—*

**95A Undecided applications for authorities**

- (1) This section applies if—
  - (a) an application for an authority was made under an existing Act, but not dealt with, before the commencement; and
  - (b) that Act allowed for an offset condition to be imposed on the authority; and
  - (c) the administering agency is deciding whether to impose on the authority a

condition in relation to an environmental offset.

- (2) The administering agency may, at the request of or with the agreement of the applicant, consider all or part of the environmental offsets policy under this Act instead of all or part of any policy about environmental offsets (however described) under the existing Act.
- (3) This section applies despite section 95.

### **95B Amendment of existing authorities**

- (1) This section applies to the following authorities granted under an existing Act if that Act allowed for an offset condition to be imposed on the authority—
  - (a) an existing authority;
  - (b) an authority granted, on or after the commencement, as the result of an application that was made, but not dealt with, before the commencement.
- (2) The authority holder may, at any time and free of charge, apply for an amendment of the authority—
  - (a) to allow the selection and delivery of an environmental offset in accordance with the environmental offsets policy; or
  - (b) to allow a financial settlement offset (however described) determined in accordance with the environmental offsets policy; or
  - (c) to remove a requirement to provide an environmental offset for—

- (i) an environmental value that is not a prescribed environmental matter under this Act; or
  - (ii) an impact on a prescribed environmental matter that is not a significant residual impact.
- (3) The authority holder must apply, in the approved form, to the administering agency that issued the authority.
- (4) The administering agency must decide the application within 20 business days after receiving the application.
- (5) The administering agency may decide to make the amendment only if satisfied that the environmental values for which the environmental offset was required have not yet been impacted by the activity that is authorised by the authority.
- (6) If the administering agency decides to make the amendment, the agency may also make any other amendments that the agency considers—
  - (a) relate to the amendment; and
  - (b) are necessary or desirable.
- (7) If the administering agency decides to amend the authority, the agency must, within 10 business days after making the decision—
  - (a) give the amended authority to the authority holder; and
  - (b) include a copy of the amended authority in the register kept under section 90.
- (8) If the administering agency decides not to amend the authority, the administering

agency must give the authority holder a notice that states—

- (a) the decision and the reasons for the decision; and
  - (b) that the holder may apply for a review of the decision; and
  - (c) how and when the holder may apply for a review of the decision.
- (9) A regulation may provide for a review of the decision.
- (10) Any provisions in the Act under which the offset condition was imposed about amending conditions of an authority, other than a provision mentioned in section 5, do not apply to an offset condition that is amended under this section.
- (11) This section applies despite section 95.

**19 Clause 16 (Amendment of sch 2 (Dictionary))**

Page 25, lines 12 to 26—

*omit, insert—*

- (1) Schedule 2, definitions *administering agency* and *impose—*  
*omit.*
- (2) Schedule 2—  
*insert—*  
***administering agency—***
  - (a) for an authority under the Planning Act, means—
    - (i) for an offset condition to which section 255D(3) of that Act applies—the entity nominated under that subsection; or

- (ii) for an offset condition for which a concurrence agency has the power to tell, or has told, an assessment manager to impose—the concurrence agency; or
- (iii) for any other offset condition—the assessment manager; or
- (b) for an authority under any other Act, means an entity that, under another Act, performs a function in relation to—
  - (i) the grant of an authority for a prescribed activity; or
  - (ii) enforcing compliance with the conditions of an authority for a prescribed activity, or otherwise administering the authority; or
- (c) for part 7, see section 26.

**20 Clause 16 (Amendment of sch 2 (Dictionary))**

Page 25, after line 26—

*insert—*

*agreed delivery arrangement* see section 19(4).

**21 Clause 16 (Amendment of sch 2 (Dictionary))**

Page 26, after line 3—

*insert—*

*impose*, in relation to an offset condition—

- (a) for an authority under another Act—means apply the offset condition (however the application is described in the other Act); and

- (b) for an authority under the Planning Act—includes tell an assessment manager under that Act to impose an offset condition; and
- (c) for an agreement entered into under another Act—means include the offset condition in the agreement.

**22 Clause 16 (Amendment of sch 2 (Dictionary))**

Page 26, after line 3—

*insert—*

*local government condition* means an offset condition that may be imposed on an authority by a local government.

**23 Clause 16 (Amendment of sch 2 (Dictionary))**

Page 26, after line 3—

*insert—*

*Planning Act* means the *Sustainable Planning Act 2009*.

**24 Clause 16 (Amendment of sch 2 (Dictionary))**

Page 26, after line 13—

*insert—*

- (3) Schedule 2, definition *matter of local environmental significance*, ‘see section 10(4)’—

*omit, insert—*

means a matter prescribed to be a prescribed environmental matter under section 10(1)(c)

**25 Before clause 18**

Page 27, before line 3—

*insert—*

**17A Amendment of s 17 (Serious environmental harm)**

Section 17(1)(b)—

*omit, insert—*

- (b) caused to—
  - (i) an area of high conservation value; or
  - (ii) an area of special significance, such as the Great Barrier Reef World Heritage Area; or

**26 Clause 20 (Insertion of new s 19A)**

Page 28, lines 20 to 22—

*omit, insert—*

- (a) the power to impose conditions on the environmental authority under chapter 5, part 5, division 6;

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

Page 29, lines 5 to 20—

*omit, insert—*

- (1A) The decision period may be extended if, at any time before the decision is made, the proponent agrees in writing to the extension.
- (2) Section 49(6)—

*insert—*

  - (d) that the proponent may, under section 49A, resubmit the EIS.
- (3) Section 49(1A) to (6)—

*renumber* as section 49(2) to (7).

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

Page 31, lines 11 to 26—

*omit, insert—*

(2A) The period may be extended if, at any time before the decision is made, the proponent has agreed in writing to the extension.

(2) Section 56A(5)—

*insert—*

(d) that the proponent may, under section 56AA, resubmit the EIS and the proponent's response to the submissions.

(3) Section 56A(2A) to (5)—

*renumber* as section 56A(3) to (6).

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

Page 39, line 13, '250A(1)(iii)'—

*omit, insert—*

250A(1)(b)(iii)

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

Page 47, line 10, 'execute'—

*omit, insert—*

executive

**31 Clause 71 (Amendment of s 358 (When order may be issued))**

Page 51, lines 19 to 22—

*omit, insert—*

Section 358(e)(iv)—



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

Page 60, line 22, ‘administering authority’—

*omit, insert—*

complainant

**33 After clause 101**

Page 61, after line 2—

*insert—*

**101A Insertion of new s 504**

Chapter 10, part 3—

*insert—*

**504 Offences relating to Great Barrier Reef World Heritage Area**

- (1) This section applies if—
  - (a) a person is convicted of an offence against this Act; and
  - (b) the commission of the offence caused, or was likely to cause, environmental harm to the Great Barrier Reef World Heritage Area.
- (2) In sentencing the person for the offence, the court must consider the environmental harm caused, or likely to have been caused, to the Great Barrier Reef World Heritage Area.

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

Page 62, lines 6 to 14—

*omit, insert—*

- (6) The administering authority may accept an enforceable undertaking in relation to a contravention or alleged contravention at

any time before any proceedings in relation to the contravention end.

- (7) If the administering authority accepts an enforceable undertaking after proceedings in relation to the contravention have started, the administering authority must take all reasonable steps to have the proceedings discontinued as soon as practicable.

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

Page 63, lines 10 to 33—

*omit, insert—*

**510 Amending enforceable undertaking—with agreement**

The administering authority may amend an enforceable undertaking with the written agreement of the person who made the undertaking.

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

Page 63, after line 33—

*insert—*

**511 Amending enforceable undertaking—clerical or formal errors**

The administering authority may amend an enforceable undertaking to correct a clerical or formal error if—

- (a) the amendment does not adversely affect the interests of the person who made the undertaking or anyone else; and
- (b) the person has been given written notice of the amendment.

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

Page 63, after line 33—

*insert—*

**512 Amending or suspending enforceable undertaking—after show cause process**

- (1) The administering authority may amend or suspend an enforceable undertaking if the administering authority is satisfied—
  - (a) the undertaking was accepted relying on a representation or declaration, made either orally or in writing, that was false or misleading in a material particular; or
  - (b) the undertaking was accepted on the basis of a miscalculation of—
    - (i) the environmental values affected or likely to be affected by the relevant activity; or
    - (ii) the quantity or quality of contaminant permitted to be released into the environment; or
    - (iii) the effects of the release of a quantity or the quality of contaminant permitted to be released into the environment; or
  - (c) the amendment or suspension is necessary or desirable because of an environmental audit, investigation or report under chapter 7, part 2; or
  - (d) the amendment or suspension is necessary or desirable because of a significant change in the way in which, or the extent to which, the relevant activity is being carried out that affects the likelihood of the undertaking—

- (i) securing compliance with this Act; or
  - (ii) enhancing the protection of the environment.
- (2) The administering authority must give the person who made the undertaking a notice that states—
  - (a) the action that the administering authority proposes to take; and
  - (b) if the action is an amendment of the undertaking—the amendment; and
  - (c) if the action is a suspension of the undertaking—the period of the suspension; and
  - (d) the grounds for taking the action; and
  - (e) the facts and circumstances that are the basis for the grounds; and
  - (f) that the person may make written representations to show why the action should not be taken: and
  - (g) the period, of at least 20 business days after the person is given the notice, within which the person may make the representations.
- (3) If the administering authority proposes to amend the enforceable undertaking, the notice must be accompanied by a copy of the undertaking that shows the amendment.
- (4) The administering authority must consider any written representation the person makes within the period stated in the notice.
- (5) If the administering authority still believes a ground exists to take the action, the authority may decide to take the action.

- (6) Within 10 business days after making that decision, the administering authority must give the person an information notice about the decision.
- (7) If the administering authority, at any time, decides not to take the action, the administering authority must promptly give the person written notice of the decision.

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

Page 63, after line 33—

*insert—*

**513 Contravention of enforceable undertaking**

- (1) A person must not contravene an enforceable undertaking made by that person that is in effect.  
Maximum penalty—
  - (a) if the offence is committed wilfully—6250 penalty units or 5 years imprisonment; or
  - (b) otherwise—4500 penalty units.
- (2) Regardless of whether the person is prosecuted for an offence against subsection (1), the administering authority may apply to a Magistrates Court for an order if the person contravenes the enforceable undertaking.
- (3) If the court is satisfied that the person contravened the undertaking, the court, in addition to imposing any penalty, may make 1 or both of the following orders—
  - (a) an order directing the person to comply with the undertaking;
  - (b) an order discharging the undertaking.

- (4) Also, the court may make any other order that the court considers appropriate in the circumstances, including an order directing the person to pay to the administering authority—
  - (a) the costs of the proceedings; and
  - (b) the reasonable costs of the administering authority in monitoring compliance with the enforceable undertaking in the future.

**39 After clause 106**

Page 66, after line 3—

*insert—*

**106A Amendment of s 713 (Continued effect to make payment)**

Section 713—

*insert—*

- (3) However, the payment is to be made to the offset account under that Act instead of to an environmental offset trust.

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

Page 67, line 3, ‘by’—

*omit, insert—*

**on**

**41 Clause 108 (Amendment of sch 4 (Dictionary))**

Page 69, line 25, after ‘definitions’—

*insert—*

*amalgamated environmental authority,*

**42 Clause 108 (Amendment of sch 4 (Dictionary))**

Page 70, after line 13—

*insert—*

***Great Barrier Reef World Heritage Area*** means the area listed as the Great Barrier Reef on the World Heritage List kept under the Convention for the Protection of the World Cultural and Natural Heritage done at Paris on 23 November 1972, as amended and in force for Australia from time to time.

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

Page 79, lines 5 to 23—

*omit.*

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

Page 79, line 24, '(3)'—

*omit, insert—*

(1)

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

Page 80, lines 1 to 4—

*omit, insert—*

- (b) becomes aware of—
  - (i) the happening of an event involving a hazardous contaminant on the contaminated land; or
  - (ii) a change in the condition of the contaminated land; or

- (iii) a notifiable activity having been carried out, or being carried out, on the contaminated land;

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

Page 80, lines 17 and 18—

*omit, insert—*

- (i) the happening of an event involving a hazardous contaminant in the local government area; or

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

Page 80, line 28, '(4)'—

*omit, insert—*

(2)

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

Page 81, lines 18 to 30—

*omit, insert—*

- (1) A person mentioned in section 320A(2)(a) must, within 24 hours after becoming aware of the event or change mentioned in section 320A(2)(b)(i) or (ii), give the administering authority written notice of the matters stated in subsection (2), unless the person has a reasonable excuse.

Maximum penalty—500 penalty units.

- (2) The notice must state—
  - (a) the nature of the event or change in condition; and



(b) the circumstances in which the event or change happened.

(3) A person mentioned in section 320A(2)(a) must, within 20 business days after becoming aware of an activity mentioned in section 320A(2)(b)(iii), give the administering authority written notice of the activity, unless the person has a reasonable excuse.

Maximum penalty—500 penalty units.

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

Page 104, line 17, after ‘Maximum penalty’—

*insert—*

for subsection (5)

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

Page 121, lines 2 to 4—

*omit, insert—*

former section 407.

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

Page 121, line 22, before ‘has’—

*insert—*

the seller

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

Page 121, after line 27—

*insert—*

### **739 Disposal permits**

Sections 424 and 425, as in force immediately before this section commences, continue to apply until the day prescribed by regulation.

### **53 Clause 141(Amendment of sch 2 (Original decisions))**

Page 123, before line 1—

*insert—*

(5) Schedule 2, part 2—

*insert—*

### **Division 6A Decision under chapter 10**

#### **Section**

#### **Description of decision**

512(5) decision to amend or suspend an enforceable undertaking

### **54 After clause 144**

Page 128, after line 8—

*insert—*

### **Part 6A Amendment of Sustainable Planning Act 2009**

#### **144A Act amended**

This part amends the *Sustainable Planning Act 2009*.

#### **144B Amendment of s 970 (Continued effect to make payment)**

Section 970—

*insert—*

- (3) However, a payment made in relation to an offset condition imposed by a department is to be made to the offset account under that Act instead of to an environmental offset trust.

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

Page 137, line 11, ‘code user’—

*omit, insert—*

resource producer

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

Page 138, line 1, ‘code user’—

*omit, insert—*

*resource producer*

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

Page 138, lines 10 to 28—

*omit, insert—*

- (1) This section applies if—
- (a) a person sells or gives away a resource under an end of waste code; and
  - (b) the person is not a registered resource producer for the code.
- (2) The resource is taken to be waste until the person becomes a registered resource producer for the code.

### **158 Compliance with end of waste code**

A registered resource producer for an end of waste code must not sell or give away the resource for the code unless the registered resource producer complies with the requirements of the end of waste code relating to the resource.

Maximum penalty—1665 penalty units.

### **159 Chief executive may make end of waste codes and grant end of waste approvals**

- (1) The chief executive may make a code (an *end of waste code*) for registered resource producers that states when a particular waste stops being a waste and becomes a resource.

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

Page 139, line 8, ‘may, by notice’—

*omit, insert—*

must, by notice given at least once every year

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

Page 145, lines 3 to 6—

*omit, insert—*

- (b) the end of waste code was made on the basis of a miscalculation of—
  - (i) the characteristics of the resource; and
  - (ii) the potential of the resource to cause serious environmental harm, or material environmental

harm, because of those characteristics; or

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

Page 145, line 19, ‘code user’—

*omit, insert—*

resource producer

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

Page 146, lines 6 to 22—

*omit, insert—*

- (f) for a notice given to a registered resource producer—that the registered resource producer may, within a stated period, make a written submission to the chief executive about the proposed action;
  - (g) for a notice published under subsection (2)(b)—that any person may, within a stated period, make a written submission to the chief executive about the proposed action.
- (4) The stated period must not end before 28 days after whichever of the following happens last—
- (a) the day the notice is given to the registered resource producer under subsection (2)(a);
  - (b) the day the notice is published under subsection (2)(b).

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

Page 147, lines 5 to 15—

*omit, insert—*

- (iv) any advice, information or comment provided by any technical advisory panel; and
- (c) another matter prescribed by regulation.
- (6) If the chief executive decides to take the proposed action, the chief executive must give each registered resource producer for the end of waste code an information notice for the decision within 10 business days after making the decision.
- (7) The decision takes effect for a registered resource producer on the later of the following days—
  - (a) the day the information notice is given to the registered resource producer;

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

Page 148, lines 13 to 24—

*omit, insert—*

- (b) to make another change that is not a change of substance and does not adversely affect the interests of a registered resource producer or a person who is likely to receive a resource from the registered resource producer.

**Division 4                      Registration of end of  
waste resource  
producers**

**173B Registration of end of waste resource  
producers**

- (1) A person becomes a registered resource producer for an end of waste code by giving the chief executive a notice that the person intends to become a registered resource producer for the code.

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

Page 149, lines 2 to 16—

*omit, insert—*

- (1) The chief executive may cancel or suspend a registered resource producer's registration if the chief executive reasonably believes the registered resource producer has failed to comply with a requirement of an end of waste code.
- (2) The chief executive may act under subsection (1) regardless of whether the chief executive has given the registered resource producer a show cause notice under chapter 11.

**173D Procedure for cancelling or suspending  
registration**

- (1) Before cancelling or suspending a registered resource producer's registration under section 173C, the chief executive must give the person a notice stating the following—

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

Page 149, lines 29 and 30, ‘code user’—

*omit, insert—*

resource producer

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

Page 150, lines 1 to 17—

*omit, insert—*

- (4) If the chief executive decides to take the proposed action, the chief executive must, within 5 business days after making the decision, give the registered resource producer an information notice for the decision.
- (5) The decision takes effect the day the information notice is given to the registered resource producer.

**173E Particular circumstances when end of waste approval lapses**

- (1) This section applies if the holder of an end of waste approval relating to a particular waste or resource becomes a registered resource producer for an end of waste code for the same waste or resource.
- (2) The person’s end of waste approval lapses.

**173F Register of registered resource producers**

- (1) The chief executive must maintain a register of registered resource producers for each end of waste code.



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

Page 153, line 5, after ‘applicant’—

*insert—*

to

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

Page 155, line 14—

*omit, insert—*

(2) However, the conditions may only impose an obligation on the holder of the approval and must not impose an obligation on a user of the resource.

(3) A regulation may prescribe the types of

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

Page 156, lines 5 to 30—

*omit, insert—*

**173Q Extending end of waste approval**

(1) A person may apply to the chief executive, on one occasion, to extend an end of waste approval.

(2) The application must be made in the approved form, not less than 1 month before the approval ends.

(3) In deciding whether to grant or refuse to grant the application, the chief executive must consider—

(a) the matters mentioned in section 173L(1); and

- (b) whether the waste, and resource, to which the approval relates would be more appropriately managed as a waste management ERA.

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

Page 161, lines 12 to 18—

*omit, insert—*

- (a) there is no longer a use, or likely to be a future use, for a particular resource under the approval; or
- (b) the management of a particular waste or the use of a particular resource under the approval has caused, or is likely to cause, serious or material environmental harm that is unlawful under the Environmental Protection Act, section 493A; or

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

Page 168, after line 17—

*insert—*

- (6) A person who is registered under a general approval that ends is taken to be a registered resource producer from the day on which the approval ends.
- (7) Section 158 does not apply to a person who was carrying out an activity in accordance with a general approval that ends until 1 year after the general approval ends.
- (8) However, subsection (3) continues to apply as if the general approval has not ended under subsection (5).

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

Page 168, lines 22 to 25—

*omit, insert—*

- (2) Despite the replacement of chapter 8 under the amending Act, chapter 8, part 5 of the former Act continues to apply to the specific approval.
- (3) From the commencement, the specific approval is taken to be an end of waste approval for the particular resource or waste to which the specific approval relates.

**73 Clause 171 (Amendment of schedule (Dictionary))**

Page 170, line 6, ‘code user’—

*omit, insert—*

*resource producer*

**74 Schedule 1 (Consequential and minor amendments)**

Page 172, line 8, ‘1987’—

*omit, insert—*

1994

**75 Schedule 1 (Consequential and minor amendments)**

Page 172, line 13, before ‘*insert*’—

*insert—*

*omit,*

**76 Schedule 1 (Consequential and minor amendments)**

Page 173, line 2, before ‘*insert*’—

*insert—*

*omit,*

**77 Schedule 1 (Consequential and minor amendments)**

Page 173, line 11, ‘code user’—

*omit, insert—*

resource producer

**78 Long title**

After ‘1992,’—

*insert—*

*the Sustainable Planning Act 2009,*

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Authorised by the Parliamentary Counsel