Environmental Protection and Other Legislation Amendment Bill 2020

Explanatory Notes

Short title

The short title of the Bill is the Environmental Protection and Other Legislation Amendment Bill 2020.

Policy objectives and the reasons for them

The principal policy objectives of the Environmental Protection and Other Legislation Amendment Bill 2020 (the Bill) are to:

- provide for the statutory appointment of a Rehabilitation Commissioner with specific functions including providing advice on rehabilitation or best practice management of land, and facilitating better public reporting on rehabilitation; and
- clarify and enhance the residual risk framework to better manage risks on sites after an environmental authority for a resource activity has been surrendered.

The Bill also includes amendments to the *Environmental Protection Act 1994* (EP Act) and *Water Act 2000* to remove unnecessary provisions, address omissions and technical errors, and clarify and improve regulatory processes and tools.

Rehabilitation Commissioner

The Queensland Government has been implementing a suite of reforms to achieve better results for the rehabilitation of land disturbed by mining activities. Central to determining that land has been adequately managed or rehabilitated is understanding what constitutes best practice. Establishing an evidence-based and clear determination of best practice rehabilitation and management for mined land in Queensland will provide certainty for business and regulators, while also providing confidence to the community on the outcomes to be achieved for mined land. It is critical that completion standards reflect a clear and shared understanding of best practice management, and this includes consideration of the important role of Traditional Owners. Developing best practice advice for rehabilitation will support implementation of the rehabilitation reforms, including the return of mined land to other land uses for the ongoing benefit of the community.

Having a clear determination of best practice management also applies in relation to the management of those areas of land that cannot sustain a post-mining land use. These areas of land are referred to as non-use management areas.

In order to enable evaluation of the rehabilitation reforms and enhance public confidence in rehabilitation in Queensland, it is also important that there is a strong framework in place for public reporting on performance and trends in rehabilitation and management outcomes.

The provision of technical advice on best practice management and public reporting on rehabilitation should be tasks performed separately from, but complementary to, the regulatory function of the Department of Environment and Science. Establishing a role with independence in reporting arrangements is designed to ensure greater public confidence that best practice management and public reporting is evidence-based and scientifically sound.

Residual risk

Environmental authorities approved under the EP Act include conditions that require the holder to manage and remediate land disturbed by the authorised activity. The EP Act enables environmental authorities to be surrendered, at which time those conditions generally cease to have effect. Before a surrender takes effect, the holder of an environmental authority for a resource activity may be required to make a residual risk payment to cover any future costs associated with the ongoing management or remediation of the site following surrender.

The Queensland Government reviewed the residual risk framework as part of its Financial Assurance Framework Reform and decided it was necessary to provide greater clarity on the processes for determining and managing residual risks. The review noted that the current framework does not enable the efficient management of the potential risks to the State of former resource sites into perpetuity, and that this could be mitigated through sensible financial management and ensuring consistent data retention on the condition of former resource sites. Stakeholders also expressed concern about the lack of clarity around the residual risk requirements, noting it as a barrier to both transitioning sites to closure and investment in rehabilitation.

In response to the review's findings and stakeholder feedback, the EP Act will be amended to clarify and enhance the residual risk framework and to ensure the State can better manage residual risks on former resource sites. Additional amendments will be made to the *Mineral and Energy Resources (Financial Provisioning) Act 2018* (MERFP Act) to establish a residual risks fund to provide for a better process for the management of residual risk payments.

Achievement of policy objectives

Rehabilitation Commissioner

To achieve the objective of an independent role for rehabilitation advice, the EP Act is to be amended to introduce a statutory Rehabilitation Commissioner that will:

- be appointed by the Governor in Council on the recommendation of the Minister;
- provide advice on what constitutes best practice management and rehabilitation to ensure progressive rehabilitation and closure plans (PRCPs) are world-class;
- provide advice on public interest evaluation processes; and
- facilitate better public reporting about rehabilitation in Queensland.

The statutory role of Rehabilitation Commissioner is separate from the role of the administering authority, who regulates resource activities through approval of environmental authorities and

taking enforcement action where necessary. The Rehabilitation Commissioner is independent from the administering authority in that they are to be appointed by the Governor in Council, on the recommendation of the Minister responsible for the EP Act, and will report directly to this Minister.

The Rehabilitation Commissioner, together with an office of staff dedicated to support the Commissioner's functions, will work collaboratively with the community (including Traditional Owners), industry, environmental and scientific groups, and the government. The Commissioner will provide advice on:

- rehabilitation practices, outcomes and policy implementation;
- best practice management of non-use management areas; and
- public interest evaluation processes.

The Rehabilitation Commissioner's advice on best practice and public interest evaluation processes will be based on rehabilitation and management themes for types of activity rather than specific resource sites. The Bill requires that this advice must be considered by the administering authority, in conjunction with other statutory considerations, when making a decision about a PRCP.

The Rehabilitation Commissioner will also be responsible for providing strategic reporting on trends and performance of both rehabilitation and best practice management across Queensland. This will enable evaluation of the rehabilitation reforms to enhance public confidence in rehabilitation in Queensland.

Residual risk

To clarify and improve the residual risk framework to better manage the risks of resource sites after surrender, the Bill contains amendments to the EP Act and MERFP Act that:

- improve consistency in the provision of residual risk information required with a surrender application;
- introduce a post-surrender management report, that includes a risk assessment of the land, which must accompany a surrender application if a resource activity was carried out on the site;
- remove provisions that allow for residual risk payments to be collected as part of progressive certification;
- clarify that residual risk payments may be collected for non-use management areas in addition to rehabilitated areas;
- require residual risks to be noted against the relevant land title;
- establish a pooled 'scheme fund' to consistently manage residual risk payments; and
- expand the remit of the scheme manager of the Financial Provisioning Scheme to include managing the residual risks fund.

These amendments will ensure that the State better understands the residual risks associated with resource sites at surrender so it receives adequate funds from resource companies to manage these risks and appropriately administers the funds received.

Other amendments

The Bill includes minor and operational amendments to the EP Act. This includes amendments to:

- enable a proposed PRCP to be submitted later in an environmental authority application process where an environmental impact statement (EIS) process is to be completed;
- prevent an unincorporated body from applying for an environmental authority, or applying for registration as a suitable operator;
- require an environmental authority holder to apply for amendments to both the environmental authority and PRCP schedule if an application for amendment of only one of these documents would result in an inconsistency between the documents;
- align public notification requirements for environmental authority amendment applications relating to a new mining lease with the public notification requirements for new environmental authority applications relating to a mining lease;
- introduce a 'properly made application' concept for environmental authority amendment applications to provide consistency with the framework for new environmental authority applications;
- align application requirements for an environmental authority for cropping and horticulture activities with matters to be considered when making a decision to grant the environmental authority;
- require relevant applications for de-amalgamation of an environmental authority to be accompanied by an application for a new decision on the estimated rehabilitation cost (ERC);
- provide for a more administratively sound process for internal review applications;
- clarify the intended operation of stay provisions in chapter 11;
- correct drafting errors in the contaminated land provisions in chapter 7; and
- remove provisions no longer required due to changes to the *Land Court Act 2000*.

There is also one minor amendment to the *Water Act 2000* to correct a drafting error.

Alternative ways of achieving policy objectives

Rehabilitation Commissioner

An office to support the Rehabilitation Commissioner is able to be established administratively, but legislation is required to establish the statutory role of the Rehabilitation Commissioner, the Commissioner's functions, powers and reporting obligations, and the way in which the Commissioner is appointed or removed from office.

Residual risk

Administrative changes can achieve some of the policy objectives but, without legislative change, gains are limited. Accordingly, amendments to the legislation are necessary to fully achieve the residual risk policy objectives.

Other amendments

The policy objectives can only be achieved through legislative amendment. Legislative amendment is required to address existing errors in the legislation, and to clarify and improve the operation of existing regulatory tools and processes in the EP Act.

Estimated cost for government implementation

Rehabilitation Commissioner

Establishing the role of the Rehabilitation Commissioner, plus the Office to support the Commissioner, will incur costs for government. Funding of $8 million over six years (2019-20 to 2024-25) has been provided to fund the role of the Commissioner and the Office. This funding provides for a total of six full time equivalent positions. This level of staffing is the minimum viable number to establish an office that will contribute to creditable and contemporary government oversight of rehabilitation by the mining industry in line with government commitments and effective value management of the procurement of external technical expertise.

A review is proposed in the final year of the funded period (2024-25) to inform the future scope of the Office and funding requirements for following years based on the experience gained over the preceding years. This review will also identify potential funding options, such as the capacity for the rehabilitation research and development funds from the Financial Provisioning Scheme to fund aspects of the Rehabilitation Commissioner's role.

Residual risk

In the future, the residual risk reforms may generate a requirement for further departmental staff (including staff from the Department of Natural Resources, Mines and Energy, and Queensland Treasury) to support implementation. However, a component of the residual risk payments will cover costs incurred by the State in administering the residual risk framework.

Other amendments

There will be no additional costs for implementation of the other amendments. Overall, the amendments are expected to improve the administrative efficiency of existing regulatory frameworks under the EP Act.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles. Potential breaches of fundamental legislative principles are addressed below.

Legislation must have sufficient regard to rights and liberties of individuals—*Legislative Standards Act 1992*, section 4(2)(a)

The Bill amends section 291 of the EP Act to make it clear that a current plan of operations is required in order to undertake petroleum activities under a petroleum lease. The Act currently requires that a plan of operations is required before acting under a petroleum lease. A plan of

operations is for a specified period of time, known as the 'plan period'. There may be environmental authority holders that are currently undertaking petroleum activities under a petroleum lease with a plan of operations for which the plan period has already ended. These existing holders will need to have a new plan of operations for a current plan period upon commencement.

This amendment raises a possible issue about whether the legislation has sufficient regard to the rights and liberties of individuals who may be environmental authority holders to whom the new obligation will apply from commencement. Any breach of this fundamental legislative principle is considered justified because the intention in requiring a plan of operations was to ensure the administering authority has information demonstrating how the operator intends to meet the conditions of its environmental authority. This intention can only be fully delivered if the plan of operations remains current for the duration of the operations. Upon introduction of the Bill, any relevant environmental authority holders acting under an expired plan of operations, that will need a new plan of operations upon commencement, will be made aware of the proposed changes to the legislation and will have time to prepare a new plan of operations before commencement.

The insertion of new section 76E(3) of the MERFP Act also raises the fundamental legislative principle that legislation must have sufficient regard to the rights and liberties of individuals, as this provision raises the right to privacy. New section 76E(3) allows the scheme manager to request, from specific chief executives, information relevant to an actuary report for the residual risks fund. Any impact on privacy is considered justifiable as the chief executives are likely to hold information necessary for determining the sustainability of the residual risks fund. Section 76E of the MERFP Act supports transparency in relation to the operation of the residual risks fund. Information given by a chief executive to the scheme manager under section 76E is subject to a duty of confidentiality and restrictions on use and disclosure (see sections 79-82 of the MERFP Act, as amended by this Bill). For these reasons, section 76E is considered to give sufficient regard to the rights and liberties of individuals.

Legislation should make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently subject to appropriate review—*Legislative Standards Act 1992*, section 4(3)(a)

The Bill inserts new section 73C into the EP Act. This section is part of the new provisions enabling a person to apply for a decision on whether an EIS may be required for an application for an environmental authority. Section 73C requires the chief executive to make a decision where one of these applications is made. The decision of the chief executive is generally not subject to merits review. This raises the fundamental legislative principle that legislation should make rights and liberties dependent on administrative power only if subject to appropriate review.

The decision under section 73C(1)(b) is similar to the decision under existing section 72 of the EP Act. Section 72 is not subject to any review rights under the EP Act, so no review rights are provided for section 73C(1)(b). The decision may, however, be appealed under the *Judicial Review Act 1991*.

The decision under section 73C(1)(a) is equivalent to the decision under existing section 143(2). The EP Act provides that section 143(2) is an original decision subject to internal review, but is not subject to appeal under the EP Act. For consistency, the Bill amends the EP

Act to provide that section 73C(1)(a) is, under the EP Act, also only subject to internal review. However, this decision may also be appealed under the *Judicial Review Act 1991*.

The review rights available for the decisions under section 73C are considered to be appropriate given the nature of the decisions and context in which they are made. It is in the interests of the community and the government that EIS processes are limited to appropriate projects (for example, to ensure resources and scrutiny are directed to the most significant projects). The administering authority and chief executive have significant technical knowledge on past, present and potential future projects and are in the best position to make a decision on the types of projects which should require, or are otherwise appropriate for, an EIS. Further, the decisions under section 72 and section 73C(1)(b) relate to a process that is voluntary, and which is only raised if a person actively seeks to undertake a legislative EIS process. Given these matters, any limitation on review rights is not considered objectionable.

Legislation should allow the delegation of administrative power only in appropriate cases and to appropriate persons—*Legislative Standards Act 1992*, section 4(3)(c)

The Bill enables the Rehabilitation Commissioner to delegate some powers. This raises the fundamental legislative principle that legislation should only allow the delegation of administrative powers in appropriate cases and to appropriate persons. However, the delegated powers are not significant. They include powers such as chairing workshops and consulting on rehabilitation matters. Furthermore, they will only be delegated to an appropriately qualified person.

The ability for the Minister to issue a direction to the Rehabilitation Commissioner cannot be delegated as it is not an administrative power and not appropriate for delegation to a public service officer. Similarly, the ability for the chief executive to request guidance on the interpretation of advice or reports prepared by the Commissioner cannot be delegated.

A Bill should have sufficient regard to the institution of Parliament —*Legislative Standards Act 1992*, section 4(4)

New sections 264A(1)(g) and 318ZI(2)(d) of the EP Act raise the fundamental legislative principle contained in section 4(4) of the *Legislative Standards Act 1992.* These sections of the EP Act allow additional matters relating to the requirements for post-surrender management reports and the criteria for a decision on a progressive certification application to be prescribed by regulation. The inclusion of these powers to prescribe additional matters in subordinate legislation is justified as flexibility is required to add and adjust matters if circumstances warrant a change. The key requirements for post-surrender management reports and major criteria for decisions on progressive certification are provided in the EP Act, but retaining the ability to prescribe additional matters by regulation will ensure the effective administration of the legislation.

It should be noted that the pre-amendment sections 264A and 318ZI also contain consistent powers to prescribe additional matters by regulation.

A Bill should sufficiently subject the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly—*Legislative Standards Act 1992*, section 4(4)(b)

The Bill inserts a new section 262(1)(d)(ii) into the EP Act that requires all resource environmental authority holders to provide a post-surrender management report with their surrender application. This report must comply with section 264A. Section 264A states that the post-surrender management report must include a risk assessment of the land that complies with a guideline. If this risk assessment identifies particular remaining risks on the relevant site, the post-surrender management report must include a risk management plan containing additional information about matters such as ongoing management activities and estimated costs and expenses of carrying out these activities. Providing for a guideline that determines whether a risk management plan is required to be submitted under the legislation raises the fundamental legislative principle that a Bill should have sufficient regard to the institution of Parliament and should sufficiently subject the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly. The guideline will not be subject to tabling and disallowance requirements.

Any breach of section 4(4) of the *Legislative Standards Act 1992* is considered justified. Due to the highly technical nature of the risk assessments, it is not practical to include detailed guidance on how to undertake the risk assessment in legislation. The requirements for risk assessments are not easily translated into legislative form. The guideline will also provide flexibility to respond to changes in the industry that may arise following commencement of the new residual risk framework. Risk assessments will be informed by best practice standards, which are subject to regular review and change.

The Bill replaces existing section 273(2) of the EP Act to require the administering authority to have regard to the residual risk guideline when deciding the amount and form of a residual risk payment. Similarly, the Bill inserts new section 76C(5) into the MERFP Act that requires the scheme manager to consider any guideline made under section 76D when deciding whether to approve a payment from the residual risks fund. These amendments also potentially infringe the fundamental legislative principle contained in section 4(4) of the *Legislative Standards Act 1992*. Any guidelines in effect for section 273(2) of the EP Act or section 76D of the MERFP Act will only need to be considered by the decision-maker and will not necessarily impose any obligation on the decision-maker to make any specific decision. Given the commercial and technical nature of the decisions to be made, it is not appropriate to include all considerations in legislation. Therefore, any breach of section 4(4) of the *Legislative Standards Act 1992* is considered justified.

Legislation should not adversely affect rights and liberties, or impose obligations, retrospectively—*Legislative Standards Act 1992*, section 4(3)(g)

The Bill includes amendments to transitional provisions in the EP Act. These amendments raise the fundamental legislative principle that legislation should not adversely affect rights and liberties, or impose obligations, retrospectively.

The EP Act has transitional provisions for the MERFP Act, which were intended to provide a consistent and equitable approach for all:

- existing environmental authorities issued for a site-specific application relating to a mining lease; and

- existing site-specific applications for an environmental authority relating to a mining lease made before 1 November 2019 and approved after commencement of the MERFP Act.

There are limited circumstances where the existing transitional provisions do not achieve this intent. The Bill seeks to address this inconsistency.

Retrospectivity is justified as it ensures that there are consistent transitional provisions for all relevant environmental authority holders. The amendments ensure that the intent of the MERFP Act, which was subject to extensive consultation, can be achieved.

Consultation

Consultation on the Bill was restricted due to difficulties arising during the novel coronavirus (COVID-19) emergency. Details of the consultation that was undertaken is provided below.

Rehabilitation Commissioner

During September and October 2019, the Department of Environment and Science consulted with key stakeholders on the proposal for a Rehabilitation Commissioner. The stakeholders consulted included those who had previously provided submissions about the establishment of a Rehabilitation Commissioner: Lock the Gate, Environmental Defenders Office, WWF Australia, Queensland Resources Council, BHP, Glencore, and Sustainable Minerals Institute. All comments received by these stakeholders has been considered in preparing the Bill. While some stakeholders questioned the need for a Rehabilitation Commissioner, other stakeholders wanted a Rehabilitation Commissioner with stronger regulatory functions.

In late May 2020, a draft of the Bill was provided to Lock the Gate, Environmental Defenders Office and Queensland Resources Council. Comments received from these stakeholders have been considered in the finalisation of the Bill.

It is considered that the Bill achieves a balanced position that takes into account the opposing views of stakeholders.

Residual risk

The Queensland Government released the *Managing Residual Risks in Queensland Discussion Paper* for public comment between 19 November 2018 and 1 February 2019. During the consultation period, meetings were held with representatives from the resources industry, and green and community groups. This included Queensland Resources Council and its members, APPEA and its members, Lock the Gate, Environmental Defenders Office, Queensland Farmers Federation, AgForce, Association of Mining and Exploration Companies, and landholders in Western Queensland. Of the 12 submissions received over the consultation period, a majority expressed general support for the policy proposals.

During 2019, workshops were held with key stakeholders interested in the residual risk calculation tool to demonstrate how residual risks would be considered in cost estimates. This workshop included representatives from the resources industry, community groups, and academia.

In late May 2020, a draft of the Bill was provided to Lock the Gate, Environmental Defenders Office and Queensland Resources Council. Comments received from these stakeholders have been considered in the finalisation of the Bill.

Other amendments

In late May 2020, a draft of the Bill was provided to Lock the Gate, Environmental Defenders Office and Queensland Resources Council. Comments received from these stakeholders have been considered in the finalisation of the Bill.

Environmental Defenders Office and Queensland Resources Council requested additional amendments to the EP Act which are not considered to be within the scope of the Bill.

Consistency with legislation of other jurisdictions

Rehabilitation Commissioner

The statutory position of the Rehabilitation Commissioner is specific to the State of Queensland and is not uniform with or complementary to legislation of the Commonwealth or another state.

Residual risk

In relation to the amendments to the residual risk framework, the Bill is specific to the State of Queensland, and is not uniform with or complementary to legislation of the Commonwealth or another state. Other jurisdictions, including the Northern Territory and Victoria, have announced proposed amendments which are generally consistent with Queensland's residual risk reforms.

Other amendments

In regard to the other amendments, the Bill is specific to the State of Queensland, and is not uniform with or complementary to legislation of the Commonwealth or another state.

Notes on provisions

Part 1 Preliminary

Short title

Clause 1 states that the short title is the *Environmental Protection and Other Legislation Amendment Bill 2020*.

Part 2 Amendment of Environmental Protection Act 1994

Act amended

Clause 2 states that this part amends the EP Act.

Amendment of s 37 (When EIS process applies)

Clause 3 amends section 37 of the EP Act to reflect the new chapter 3, part 3 to be inserted by this Bill (see clause 4). If the chief executive decides under chapter 3, part 3 that an EIS would be required for a proposed application for an environmental authority, or that an EIS will not be required but approves an EIS being undertaken anyway, the project proponent may commence the EIS process for the application under chapter 3, part 1.

Insertion of new ch 3, pt 3

Clause 4 inserts a new part into chapter 3 to enable a person to apply for a decision on whether an EIS may be required for an application for an environmental authority.

Part 3 Decision about whether EIS may be required

Section 73 Main purpose of part and its achievement

Section 73 states that the main purpose of chapter 3, part 3 is to enable a proponent considering applying for an environmental authority for their project to apply for a decision on whether an EIS would be required for the environmental authority application under the EP Act.

The new provisions will provide a process for proponents to know, before submitting an application for an environmental authority, whether an EIS is required. Under the pre-amended EP Act, the decision on whether an EIS is required is not made until after an environmental authority application is made (see section 143). The new provisions introduce an option for proponents to obtain a decision before commencing the environmental authority application process.

If the decision is that an EIS will be required, the proponent may then decide to complete the EIS before submitting their environmental authority application, and use the EIS to refine their project and associated environmental authority application. If the

decision is that an EIS will not be required, the proponent will have more certainty regarding the environmental authority application process and timeframes that will apply for their project.

Section 73A Proposed applicant may apply for decision about EIS

Section 73A states that a person considering applying for an environmental authority for their project may apply to the chief executive for a decision on whether an EIS will be required for the application under the EP Act.

Provision is made so that, in addition to requesting a decision on whether an EIS will be required, the proponent can also request (as part of the same application) for approval to voluntarily prepare an EIS. The proponent may do this if they consider that the chief executive may decide that an EIS is not required, but they still want to retain the option of potentially voluntarily preparing an EIS. If the decision is that an EIS is not required, the chief executive will then refuse or grant the request for approval to voluntarily prepare an EIS. This way, if a proponent later decides it wants to do a voluntary EIS even though an EIS is not required, the proponent does not need to make an application under chapter 3, part 2.

Section 73B Requirements for application

Section 73B sets out the application requirements for applications made under section 73A. The application requirements are similar to the application requirements for a decision on whether a voluntary EIS is appropriate (under chapter 3, part 2), as it is expected that the decision-making process will be similar. Unless the applicant is also applying for a decision under section 73A(1)(b) (i.e. for approval to voluntarily prepare an EIS if the chief executive decides that an EIS would not be required), the application does not need to include information regarding access to the land or documents required, under section 41(3), to accompany a submitted draft terms of reference.

Section 73C Deciding application

Section 73C requires the chief executive to consider the application and make a decision. The chief executive must consider the standard criteria in making a decision on whether an EIS would be required for a project. This is consistent with the decision-making considerations under section 143.

In making a decision on whether an EIS can be undertaken despite not being required for the project, the chief executive may only grant approval to undertake the EIS if the chief executive considers an EIS is appropriate. This is consistent with the decision-making criteria under section 72.

Similar to decisions under section 72, there is no time limit on the chief executive to decide the application. It is considered more appropriate to leave the time for such negotiations on the decision to the discretion of the chief executive, rather than by imposing time periods in the legislation.

Amendment of s 82 (Offence to contravene agricultural ERA standard)

Clause 5 replaces section 82(1). This is so it is clear that while the offence provision applies to an environmentally relevant activity (ERA) that meets the definition of agricultural ERA in section 79 of the EP Act, it still applies if the agricultural ERA is also a prescribed ERA for new commercial cropping and horticulture in the Great Barrier Reef catchment.

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

Clause 6 inserts a definition for 'Great Barrier Reef catchment waters'. This is a new term for the EP Act, inserted by other clauses in this Bill. The definition is the same as the definition of 'Great Barrier Reef catchment waters' in section 41AA(6) of the Environmental Protection Regulation 2019 and section 11(6) of the Environmental Protection (Water and Wetland Biodiversity) Policy 2019.

This clause also inserts a definition for 'single integrated operation' which was unintentionally missing from section 112.

Amendment of s 113 (Single integrated operations)

Clause 7 makes an administrative drafting correction which clarifies that section 113 defines the term 'single integrated operation'.

Amendment of s 114A (Application of assessment process for proposed PRC plans)

Clause 8 amends section 114A to reflect other amendments to be made to the EP Act through this Bill. Specifically, this amendment recognises that a site-specific application for a mining activity relating to a mining lease may not need to be accompanied by a proposed PRCP (due to amendments to section 125 made through this Bill), but that if a proposed PRCP does not accompany a site-specific application relating to a mining lease, a proposed PRCP will need to be submitted at a later stage in the application process.

Section 114A(1) is replaced so that this provision refers to both proposed PRCPs submitted with a site-specific application and proposed PRCPs submitted at a later stage. For proposed PRCPs submitted at a later stage, the proposed PRCP starts to be treated as part of the application as soon as it is submitted.

Amendment of s 116 (Who may apply for an environmental authority)

Clause 9 amends section 116 so that only a person (as defined under the *Acts Interpretation Act 1954*) can apply for an environmental authority. Under the pre-amended EP Act, an entity could apply for an environmental authority, which meant that unincorporated bodies could hold an environmental authority. Unincorporated bodies should not be able to hold an environmental authority as they are non-legal entities.

Amendment of s 117 (Restriction for applications for resource activities)

Clause 10 is a consequential amendment to reflect the amendment to section 116.

Amendment of s 118 (Single application required for ERA projects)

Clause 11 is a consequential amendment to reflect the amendment to section 116.

Amendment of s 125 (Requirements for applications generally)

Clause 12 makes a consequential amendment to section 125(1)(f) to reflect the amendment to section 116 made through this Bill. A further consequential amendment is made to section 125(1)(n) to remove the words 'that complies with this division'. These words are no longer required because a new definition of 'proposed PRC plan' is inserted into the EP Act through this Bill, and this definition ensures that proposed PRCPs comply with chapter 5, part 2, division 3.

This clause also inserts section 125(5) to limit the matters that need to be addressed in variation or site-specific applications for an environmental authority for new cropping and horticulture activities in the Great Barrier Reef catchment (ERA 13A). Under new section 125(5)(a), a variation or site-specific application for an environmental authority for ERA 13A only needs to include the matters in section 125(1)(l)(i)(A) to (D), (ii) and (iii) to the extent each matter relates to the release of fine sediment, or dissolved inorganic nitrogen, into the waters of the Great Barrier Reef catchment or waters of the Great Barrier Reef. Under new section 125(5)(b), a variation or site-specific application for an environmental authority for ERA 13A does not need to include details of how the land will be rehabilitated after the activity ceases.

Under the EP Act, the regulation of new commercial cropping and horticulture in the Great Barrier Reef catchment is limited to the water quality impacts caused by the release of dissolved inorganic nitrogen and fine sediment into a watercourse in the Great Barrier Reef catchment or directly into waters of the Great Barrier Reef. The broad range of matters that must be included in applications for environmental authorities for other prescribed ERAs and for resource activities do not need to be included in a variation or site-specific application for ERA 13A as they will not be considered or assessed for ERA 13A.

The new section 125(5) ensures that, for an environmental authority for ERA 13A, the matters that must be included in an environmental authority application are limited in the same way as the matters to be considered by the administering authority under section 35(4) of the Environmental Protection Regulation 2019 when making an environmental management decision.

A further additional provision, new section 125(6), is inserted through this clause so that an environmental authority application does not need to be accompanied with the information set out in section 125(1)(l) (i.e. an assessment of the likely impacts on environmental values) if any of the following apply:

- the chief executive has approved the voluntary preparation of an EIS (either under chapter 3, part 2 or new chapter 3, part 3) and the applicant has started the EIS process or committed to prepare an EIS;
- the chief executive has decided that an EIS is required for the application (under new chapter 3, part 3); or
- the relevant project is a coordinated project for which an EIS is required under the *State Development and Public Works Organisation Act 1971.*

Similarly, for a site-specific application relating to a mining lease, if any of the above apply, a proposed PRCP does not need to accompany the application.

If an EIS is to be completed, then the EIS will be used to inform any required PRCP and will provide more detailed information on likely impacts on environmental values, so these should not need to be provided in the initial application documents. The EIS will need to be completed before the end of the information stage of the application, and so information on impacts on environmental values and the proposed PRCP can be provided at that point of the application process.

Amendment of s 130 (Nomination of principal applicant)

Clause 13 contains consequential amendments. The first amendment to replace the reference to 'entity' with 'person' reflects the amendment to section 116. The second amendment to replace 'accompanying' with 'for' reflects that, because of amendments to section 125 in this Bill, a proposed PRCP may not need to accompany an environmental authority application that is a site-specific application relating to a mining lease.

Amendment of s 132 (Changing application or proposed PRC plan)

Clause 14 is a consequential amendment to reflect the amendment to section 116.

Amendment of s 136A (Administering authority must obtain report about public interest evaluation for particular applications)

Clause 15 contains consequential amendments to reflect that, because of amendments to section 125 in this Bill, a proposed PRCP may not need to accompany an environmental authority application that is a site-specific application relating to a mining lease, and will now (in certain circumstances) be able to be submitted after the application stage ends.

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

Clause 16 amends section 139 so that there is no exemption from the information stage if:

- for a variation or site-specific application – information in section 125(1)(l) has not been provided to the administering authority; or
- for a site-specific application relating to a mining lease – a proposed PRCP was not included with the application.

This amendment is required because of the amendment to section 125 in this Bill which provides an exclusion from having to provide information specified in section 125(1)(l) or a proposed PRCP with an application if an EIS is to be carried out.

Where the relevant information or proposed PRCP did not accompany the application, it is appropriate that the information stage apply so that this stage can be used to ensure that information on impacts on environmental values and a proposed PRCP are provided.

Amendment of s 143 (EIS may be required)

Clause 17 amends section 143 so that if the chief executive had made a decision under new section 73C(1)(a) (inserted by clause 4) that an EIS will not be required for a project, the administering authority cannot include in an information request a requirement that the applicant provide an EIS for the project. However, if the project has changed in any materially relevant way since the preliminary EIS decision was made, the administering authority may require an EIS through an information request.

This amendment is required to provide project proponents with certainty that a decision under new chapter 3, part 3 will not be reversed during the environmental authority application stage.

Insertion of new s 143A

Clause 18 inserts a new section that requires the administering authority to include in an information request a requirement that the applicant submit a proposed PRCP. This requirement only applies in circumstances where the application is a site-specific application for an environmental authority relating to a mining activity for a mining lease, and where a proposed PRCP does not accompany the application submitted under chapter 5, part 2 of the EP Act. When these circumstances apply, the intent is that a proposed PRCP must be submitted during the information stage.

Due to the amendment to section 125 to enable a site-specific application relating to a mining lease to be made without an accompanying proposed PRCP, it is necessary to insert a new provision so that the administering authority can require the applicant to submit the PRCP at a later stage. New section 143A enables this to occur through an information request.

If the administering authority makes a request under section 143A, the administering authority may also make an information request requiring that the applicant provide an EIS for the application. In these circumstances, the applicant can provide the proposed PRCP through the EIS process. Providing the proposed PRCP through the EIS process would satisfy the information request made under section 143A.

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

Clause 19 amends section 144 to, in effect, extend the time in which the administering authority may make an information request where there is a site-specific application relating to a mining lease and a proposed PRCP did not accompany the application. This amendment is required because of the changes to the EP Act which enable a proposed PRCP to be submitted during the information stage, rather than with the application. If a site-specific application relating to a mining lease was not accompanied by a proposed PRCP, the administering authority will have at least 10 business days from the day the proposed PRCP is submitted to make an information request. This will ensure the administering authority has sufficient time to review the proposed PRCP prior to the end of the period in which it can make an information request.

For a site-specific application that is not subject to a requirement for a proposed PRCP, the timeframe is unchanged (i.e. the information request for the application must be made within 20 business days after the application stage ends for the application).

Amendment of s 146 (Applicant responds to any information request)

Clause 20 amends section 146 to ensure that applicants have to strictly comply with any information request requiring them to submit a proposed PRCP. Due to the operation of section 148(a), the information stage will not end until a proposed PRCP that complies with chapter 5, part 2, division 3 is submitted in accordance with the information request.

If a proposed PRCP is not provided in accordance with the information request, the environmental authority application will lapse under section 147.

The amendment of section 146 supports achievement of the abovementioned intent (i.e. for site-specific applications for an environmental authority relating to a mining activity for a mining lease, where the proposed PRCP does not accompany the application, it must be submitted during the information stage).

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

Clause 21 amends section 150 so that the notification stage does not apply if an EIS is notified either before the environmental authority application was made or during the information stage. This includes an EIS notified under either the EP Act or *State Development and Public Works Organisation Act 1971*. The pre-amended section 150(1)(a)-(b) required the EIS to be notified 'before the application was made'. This is amended to reflect that the EIS may not be notified until after the end of the application stage. Where an EIS is required to be completed during the information stage, or the applicant voluntarily completes an EIS during the information stage, the public notification conducted for the EIS should be taken to be the public notification required under chapter 5, part 4 (the notification stage). The applicant will not be required to undergo public notification again for the environmental authority application. However, section 150(1)(c)-(d) continue to apply so that if there are any relevant material changes to the project since the EIS was notified, the notification stage will apply.

To put it beyond doubt, section 150 is also amended so that there is only an exclusion from the notification stage for a site-specific application relating to a mining lease if a proposed PRCP for the application was notified through an EIS process. This amendment is required because of the amendments to section 125 of the EP Act which enable a site-specific application relating to a mining lease to be submitted without an accompanying proposed PRCP. Despite these changes, there is no change to the intent of the EP Act in terms of requiring all proposed PRCPs to be subject to public notification. The public notification of the proposed PRCP may be through either the notification stage in chapter 5, part 4, or through the EIS notification. If the proposed PRCP was notified through an EIS notification process, it will not be required to undergo notification again under chapter 5, part 4. However, if there are any relevant material changes to the proposed PRCP (as outlined in section 150(1)(d)) since the EIS was notified, the notification stage will apply to the environmental authority application (including proposed PRCP).

Amendment of s 151 (When notification stage can start)

Clause 22 amends section 151 so that if the application is a site-specific application for a mining activity relating to a mining lease, the applicant must have submitted a proposed PRCP for the application before starting the notification stage. This change is required because of the

amendment to section 125 which enables a site-specific application relating to a mining lease to be submitted without a proposed PRCP. If a site-specific application relating to a mining lease is subject to the notification stage, the proposed PRCP should be notified with the environmental authority application, so the notification stage should not start until the proposed PRCP is submitted.

Amendment of s 153 (Required content of application notice)

Clause 23 amends section 153(1)(e)-(f) to replace references to 'application' with 'application documents'. For a site-specific application relating to a mining lease, this will ensure that the proposed PRCP is captured under section 153(1)(e)-(f) even where the environmental authority application submitted under chapter 5, part 2 was not accompanied by the proposed PRCP. With an amendment to the definition of 'application documents' through this Bill, this term also includes (for a site-specific application relating to a mining lease) the proposed PRCP even where it is not submitted until after the end of the application stage. This means that for site-specific applications relating to a mining lease, the application notice will always need to state where the proposed PRCP may be inspected or accessed and where copies or extracts from the proposed PRCP may be obtained. Further, it will always state that an entity has the ability to make a submission about the proposed PRCP.

Section 153(2) is amended by this clause to reflect that an EIS may have been notified either before the environmental authority application was made or during the information stage. The pre-amended section 153(2) refers to an EIS being notified 'before the application was made'. This is amended to reflect that the EIS may not be notified until after the end of the application stage.

Section 153(3) is also amended to replace the reference to 'properly made application' with 'application documents' because of amendments to section 125 to allow a site-specific application relating to a mining lease to be submitted without a proposed PRCP. For a site-specific application relating to a mining lease, while a 'properly made application' may not include a proposed PRCP, for the purposes of section 153(3), the 'application documents' will include a proposed PRCP even where the proposed PRCP was not submitted until the information stage.

Amendment of s 157 (Public access to application)

Clause 24 amends section 157 to ensure that, for site-specific applications for a mining lease, the public has access to the environmental authority application and the proposed PRCP for the application. This is achieved through replacing references to 'application' with 'application documents'. This Bill amends the definition of 'application documents' so that this term captures a proposed PRCP for an application, even where the proposed PRCP is not submitted with the environmental authority application.

Amendment of s 158 (Declaration of compliance)

Clause 25 amends section 158(1)(b) so it is consistent with the requirement imposed under section 156(3). The pre-amended section 158(1)(b) is inconsistent with section 156(3) which requires that the application documents be made available on a website 'from the day the document is given to the administering authority'.

Section 158(1)(b) is also amended to ensure it refers to all documents mentioned in section 156(2), which includes responses to any information requests.

Amendment of s 160 (Right to make submission)

Clause 26 amends section 160(1) so it is clear that an entity is able to make a submission on a proposed PRCP. With the amendments to section 125 to allow a site-specific application relating to a mining lease to be submitted without a proposed PRCP, it is necessary to make an amendment to section 160(1) to put beyond doubt that a submission can still be made on a proposed PRCP even where it was not provided with the environmental authority application.

Amendment of s 161 (Acceptance of submission)

Clause 27 amends section 161(4) to reflect that an EIS may have been notified either before the environmental authority application was made or during the information stage. The pre-amended section 161(4) refers to an EIS being notified 'before the application was made'. This is amended to reflect that the EIS may not be notified until after the end of the application stage.

Amendment of s 176A (Criteria for decision – proposed PRCP schedule)

Clause 28 amends section 176A(1) to reflect that, because of amendments to section 125 in this Bill, a proposed PRCP may not need to 'accompany' an environmental authority application that is a site-specific application relating to a mining lease.

This clause also amends section 176A(2)(b) to ensure that any advice, report or guidance published by the Rehabilitation Commissioner and relevant to the PRCP decision must be considered by the administering authority in making a decision about whether to approve the proposed PRCP. The administering authority will not be bound to comply with the advice, guidance or report but must consider it.

Note: there are no specific transitional provisions for this amendment as the usual *Acts Interpretation Act 1954* provisions would apply so that the advice must be considered if it is published before a decision is made about whether to approve, approve with or without conditions, or refuse a proposed PRCP. If there is no advice, report or guidance published at the time of the decision, then it would not need to be taken into account (for example, draft advice need not be considered).

Omission of s 189 (Land Court mediation of objections)

Clause 29 omits section 189. Section 189 is no longer required because sections 37 and 52B of the *Land Court Act 2000* now provide for mediation and alternative dispute resolution processes for objections decisions.

Amendment of s 215 (Other amendments)

Clause 30 amends section 215(2)(c)(i) to reflect that, due to amendments to be made through this Bill, the EP Act only makes provisions for another person (not another entity) to become a holder of an environmental authority.

Amendment of s 222 (Exclusions from amendment under pt 7)

Clause 31 amends section 222(c) to reflect that, due to amendments to be made through this Bill, an environmental authority is only able to be transferred to another person (not another entity).

Amendment of s 223 (Definitions for part)

Clause 32 inserts a definition of 'properly made amendment application' which is a new term inserted by this Bill (see insertion of new section 227AAA).

Amendment of s 225 (Amendment application cannot be made in particular circumstances)

Clause 33 inserts an additional subsection in section 225 to clarify that an amendment application cannot be made if the amendment is to add an additional ERA and the addition of the activity would mean that the environmental authority does not meet the definition of 'ERA project'. This includes activities that are not to be carried out as a 'single integrated operation'.

If an amendment to an environmental authority would result in an environmental authority that is not for an ERA project, a person must apply for a new environmental authority for the activity.

This amendment is consistent with provisions in chapter 5, part 2 which prevent a person from making an application for a new environmental authority for multiple activities that are not to be carried out as a single integrated operation.

Insertion of new s 226AA

Clause 34 inserts a new section which requires an amendment application to request amendments to both the environmental authority and PRCP schedule to which it relates if the amendment of only one of these documents would result in an inconsistency between the documents. This amendment is aimed at reducing any inconsistencies between environmental authorities and PRCP schedules, and is intended to ensure applicants take responsibility for assessing their environmental authorities and PRCP schedules for consistency prior to making an amendment application.

Amendment of s 226A (Requirements for amendment applications for environmental authorities)

Clause 35 amends section 226A(2) to include a reference to a situation where the Coordinator-General has evaluated an EIS for the relevant activity the subject of the proposed amendment and there are Coordinator-General conditions that relate to the proposed amendment.

Under section 226A(1)(f), an amendment application for an environmental authority must include an assessment of likely impacts on environmental values. Under section 226A(2), this assessment is not required if an EIS has been completed under the EP Act and the assessment under the EIS would be the same.

The pre-amended section 226A(2) does not recognise a Coordinator-General EIS. This clause ensures that an assessment of environmental value impacts is not required in an amendment application if either an EP Act EIS or Coordinator-General EIS has been completed, and the assessment under the EIS would be the same. This ensures consistency with the provisions that apply for new environmental authority applications (see section 125) and reduces duplication.

This clause also amends section 226A to limit the information that must be included in amendment applications for an environmental authority for ERA 13A. An amendment application for ERA 13A only needs to address matters in subsections (1)(f)(i) to (iv), (g) and (h) to the extent each matter relates to the release of fine sediment, or dissolved inorganic nitrogen, into the waters of the Great Barrier Reef catchment or the waters of the Great Barrier Reef. Amendment applications for ERA13A are also not required to include details of how the land will be rehabilitated after the activity ceases.

This amendment ensures that, for an environmental authority for ERA 13A, the matters that must be included in an amendment application are limited in the same way as the matters to be considered by the administering authority under section 35(4) of the Environmental Protection Regulation 2019 when making an environmental management decision.

Insertion of new s 227AAA

Clause 36 inserts a new section which provides for 'properly made amendment applications'. The EP Act currently provides for properly made applications, but not properly made amendment applications. To be a properly made amendment application, the amendment application must meet the requirements for amendment applications prescribed in the EP Act.

Insertion of new ch 5, pt 7, div 2AA

Clause 37 inserts a new division prescribing a process to be followed for amendment applications that are not properly made amendment applications. The process is consistent with the process that applies for not properly made applications (sections 128-9).

Division 2AA Notices about not properly made amendment applications

Section 227AAB Notice about amendment application that is not a properly made amendment application

This section requires the administering authority to give an applicant for an amendment application that is not a properly made amendment application a notice. This notice provides the opportunity for the applicant to take action to make the application a properly made amendment application. This section is intended to be equivalent to section 128 but to apply to not properly made amendment applications.

Section 227AAC When amendment application lapses

This section applies where an applicant is given a notice under new section 227AAB. The section states that an amendment application lapses if the applicant does not take appropriate action to make the application a properly made amendment application.

This section is equivalent to section 129 but applies to not properly made amendment applications.

Amendment of s 228 (Assessment level decision for amendment application)

Clause 38 amends section 228 as a consequence of the insertion of new sections 227AAB and 227AAC. It would not be appropriate for the administering authority to make an assessment level decision for an amendment application that is not a properly made amendment application. For the administering authority to make a fully informed assessment level decision, the amendment application needs to be a properly made amendment application. To facilitate this, in circumstances where an applicant is given a notice that states the application is not properly made, the time for making an assessment level decision is 10 business days from the administering authority receiving notice that the applicant has taken the action the administering authority advised as necessary for the application to be a properly made amendment application. In other circumstances, the time for making an assessment level decision remains the same as that in the pre-amended section 228.

Amendment of s 230 (Administering authority may require public notification for particular amendment applications)

Clause 39 amends section 230 to provide greater consistency with the provisions that apply for a new environmental authority application (section 149). Section 149 states that the notification stage applies to an application if any part of the application is for a mining activity relating to a mining lease. Section 230 is amended so that it states that the administering authority can require notification for an amendment application that relates to a new mining lease. The administering authority will no longer need to consider the criteria in section 230(2) before requiring notification for these amendment applications.

In practice, all amendment applications for a new mining lease satisfy the criteria in section 230(2). Therefore, the amendment will not have an impact on environmental authority holders, but will reduce administrative burden for the administering authority.

Amendment of s 232 (Relevant application process applies)

Clause 40 amends section 232 to alter the application of some sections in chapter 5, parts 3-4 for amendment applications relating to an environmental authority for a mining lease. This amendment is required as a consequence of amendments to sections 139, 150 and 151 and the insertion of new section 143A. This will ensure that where an amendment application relates to an environmental authority for a mining lease, and the amendment is only for the environmental authority and not for a PRCP schedule for that authority, the referenced provisions do not apply. This will ensure that the information and notification stage provisions are not triggered simply because there is no PRCP for the amendment application.

This clause also includes a minor drafting correction to section 232(2)(a).

Amendment of s 236 (Changing amendment application)

Clause 41 amends section 236 to insert additional subsections that make the provisions applying to amendment applications more consistent with the provisions applying to

applications. It is reasonable for provisions equivalent to section 132(2)-(3) of the EP Act to apply to amendment applications.

Amendment of s 239 (Application of div 5)

Clause 42 corrects a drafting error to ensure it is clear that the relevant division applies to all amendment applications that are a minor amendment, including an application for a condition conversion.

Amendment of s 240 (Deciding amendment application)

Clause 43 amends section 240 so that the decision-making period for an amendment application can be extended by agreement with the applicant. There is currently provision under a number of provisions in the EP Act for a statutory time period to be extended by agreement.

Section 240 currently requires the administering authority to decide an amendment application within 10 business days of the assessment level decision. This amendment to section 240 will allow the administering authority to extend this by no more than 20 business days, if agreed to by the applicant.

Amendment of s 245 (Who may apply)

Clause 44 replaces references to 'entities' in section 245(2) with 'persons' to reflect that, due to amendments to be made through this Bill, the EP Act only makes provisions for another person (not another entity) to become a holder of an environmental authority. Only 'persons' (not 'entities') should hold an environmental authority, and therefore only 'persons' should be applying to amalgamate an environmental authority.

Amendment of s 246 (Requirements for amalgamation application)

Clause 45 amends section 246 to add to the requirements for applications for amalgamation of environmental authorities. These additional requirements are intended to increase certainty regarding the anniversary day for proposed amalgamated environmental authorities. An amalgamated environmental authority will have only one anniversary day so that there is a single date for reporting and payment of annual fees.

For an application for an amalgamated corporate authority, the application needs to be accompanied by an application under section 316L to change the anniversary days for the existing environmental authorities the subject of the application. The proposed new anniversary day for each of the authorities must be the same day. This will effectively allow the applicant to nominate the anniversary day for the proposed amalgamated environmental authority (because the anniversary day for the existing authorities will become the anniversary day for the amalgamated authority). The nominated anniversary day could be the same as the anniversary day for one of the existing environmental authorities the subject of the amalgamation application, or it may be different to the existing anniversary days.

For an application for an amalgamated local government authority or amalgamated project authority, if two or more of the existing environmental authorities the subject of the application share the same highest annual fee, the amalgamation application must nominate the anniversary

day of one of these existing authorities as the anniversary day for the proposed amalgamated environmental authority.

There is no change to the application requirements for an amalgamated local government authority or amalgamated project authority where there is only one existing environmental authority with the highest annual fee.

Insertion of new s 247A

Clause 46 inserts a new section which prescribes what the anniversary day for an amalgamated local government authority or amalgamated project authority is following approval of an amalgamation application.

If there were multiple existing environmental authorities with the same highest annual fee, the anniversary day is the day nominated by the applicant in the amalgamation application (see associated amendment to section 246).

If there was only one existing environmental authority with the highest annual fee, the anniversary day is the same as the anniversary day for the authority that had the highest annual fee.

Together with the amendment to section 246, this clause is intended to increase certainty regarding the anniversary day for an amalgamated environmental authority, and to ensure that only one anniversary day applies to an amalgamated environmental authority. This section does not prescribe what the anniversary day is for an amalgamated corporate authority, as the anniversary day for these authorities are determined through an application under section 316L.

Amendment of s 248 (Steps after deciding amalgamation application)

Clause 47 amends section 248 to reflect the amendment to section 246, and insertion of new section 247A. Section 248 is amended so that an applicant for an amalgamated local government authority or amalgamated project authority is given written notice of the anniversary day for the authority.

The amendment does not apply for amalgamated corporate authorities because the administering authority will need to provide notice of its decision on whether to change the anniversary day under section 316N.

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

Clause 48 amends section 250B to require a de-amalgamation application to be accompanied by applications for an ERC decision if an ERC decision is in effect, or has been in effect, for the environmental authority the subject of the de-amalgamation application. The application for an ERC decision must be made under section 298 of the EP Act and there must be one of these applications for each proposed de-amalgamated environmental authority (for example, if the de-amalgamation application is to de-amalgamate an environmental authority into three environmental authorities, the de-amalgamation application must be accompanied with three applications for an ERC decision for each of those proposed new environmental authorities).

This amendment is intended to ensure that the ERC accurately reflects rehabilitation liability immediately following a de-amalgamation. To achieve this intent, amendments are also made to other provisions in the EP Act (see the amendments to section 250C, 303, 304 and 306).

Amendment of s 250C (De-amalgamation)

Clause 49 amends section 250C to change when an environmental authority can be de-amalgamated if an ERC decision is in effect, or has been in effect, for the environmental authority the subject of the de-amalgamation application. In these circumstances, the administering authority cannot de-amalgamate the environmental authority unless an ERC decision has been made for each of the proposed de-amalgamated environmental authorities. ERC decisions are made under section 300 of the EP Act.

Together with amendments to other provisions in the EP Act made through this Bill, this amendment is intended to ensure that the ERC is accurate for a de-amalgamated environmental authority. Under the pre-amended EP Act, there was no requirement for a new ERC decision to be made prior to de-amalgamation, which meant that the ERC for each de-amalgamated environmental authority did not necessarily reflect the rehabilitation costs and expenses associated with each authority.

There is currently a 15 business day timeframe to decide both an ERC application and de-amalgamation application. However, the ERC decision timeframe may be extended by 10 business days if the department requests further information. If further information is requested for an ERC decision linked to a de-amalgamation application, it is important that the environmental authorities are not de-amalgamated until this further information is received and assessed. This can be assured through this amendment to section 250C.

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

Clause 50 replaces section 250D(a) to amend when a de-amalgamation relating to a transfer tenure may take effect. For the de-amalgamated environmental authority to take effect, the holder must have paid a contribution to the scheme fund or given a surety for the authority under the MERFP Act. This amendment is made to ensure that a transfer cannot be effective until the proposed holder of the environmental authority has complied with provisioning requirements under the MERFP Act.

Amendment of s 252 (Who may apply for transfer)

Clause 51 amends section 252 so an environmental authority for a prescribed ERA can only be transferred to a 'person' (as defined under the *Acts Interpretation Act 1954*). Under the pre-amended EP Act, the holder could apply to transfer an environmental authority to an 'entity', which meant that unincorporated bodies could become the holder of an environmental authority. Unincorporated bodies should not be able to hold an environmental authority as they are non-legal entities.

Amendment of s 256 (Notice to owners of transfer)

Clause 52 is a consequential amendment to section 256 to reflect the amendment to section 252.

Amendment of s 262 (Requirements for surrender application)

Clause 53 amends section 262 of the EP Act to require that, where a resource activity has been carried out, a surrender application must be accompanied by a post-surrender management report that complies with new section 264A (inserted by this Bill). The post-surrender management report will include information required to enable the consideration of the residual risks of the activity. This information was previously required to be provided in the final rehabilitation report or the post-mining management report.

The final rehabilitation report will be retained as it still provides the administering authority with important information about whether the activity has complied with the environmental authority conditions and whether the land has been satisfactorily rehabilitated. In comparison, the post-mining management report will be removed. The sole purpose of the post-mining management report was to provide information on residual risks where environmental authority holders have a PRCP.

This clause also amends section 262 to require that the compliance statement accompanying a surrender application must state the extent to which the post-surrender management report is accurate. This will ensure consistency with the requirement that applied to post-mining management reports under the pre-amended section 262.

Amendment of s 264 (Requirements for final rehabilitation report)

Clause 54 amends section 264 of the EP Act to reflect that, in relation to resource activities, information about residual risks will need to be included in the post-surrender management report, rather than in the final rehabilitation report. For surrender applications for resource activities, the following will no longer be requirements of the final rehabilitation report:

- ongoing environmental management needs of the land;
- environmental risk assessment of the land; and
- residual risks associated with the land.

These requirements will be relocated to the post-surrender management report (see clause 55). This will allow all information requirements relevant to residual risks to be consistently provided for all resource activities and to be located in the one place for ease of management after surrender.

The requirements for a final rehabilitation report for an environmental authority that is not for a resource activity remains unchanged.

Replacement of s 264A (Requirements for a post-mining management report)

Clause 55 replaces section 264A of the EP Act (which stated the requirements for post-mining management reports) to reflect the removal of the post-mining management report. New section 264A lists the requirements for a post-surrender management report. The post-surrender management report must:

- be made in the approved form;
- state whether particulars of the land are included in the contaminated land register or the environmental management register;
- state whether a site management plan exists for any part of the land;

- include a map of the land showing the location of where the resource activities were undertaken and any site features of the land (e.g. wells, bores, dams, voids, pipelines);
- state any assumptions made in relation to the rehabilitation or future use of the land; and
- include a risk assessment of the land that complies with the residual risk assessment guideline.

The requirements in section 264A will ensure that all risks on the land have been adequately assessed and that all risk assessments are carried out consistently.

The residual risk assessment guideline will be publicly available and provide a number of methodologies that can be used by environmental authority holders to satisfy the risk assessment requirement.

The risk assessment will identify sources of potential residual risk, which are likely to be associated with remaining site features. Examples of sites features likely to have residual risks include tailings storage facilities, waste encapsulation facilities, voids and water management structures. The risk assessment will also identify the ongoing management activities that would minimise risks from those features, and the types of remedial activities that may be required if a risk event occurs, as well as the estimated costs and expenses associated with carrying out these activities.

As part of the risk assessment, there will be an identification of all credible risk events related to a failure of the rehabilitation or management action to perform as intended. An event is credible if there is a reasonable expectation that it is likely to occur at least once within a time span measured in hundreds or possibly thousands of years, and the event would result in a cost consequence. The likelihood and consequences of each credible risk event must be considered to determine its risk. This involves the calculation of a 'risk quotient' (i.e. the product of the likely cost of an event multiplied by its likelihood of occurrence). The risk quotients of identified risks will be considered in estimating the costs and expenses associated with the credible risks on site.

A risk management plan for the land must be included with the post-surrender management report if:

- the risk assessment of the land identifies residual risks for the land; and
- the residual risk assessment guideline requires the applicant to work out, in a stated way, the estimated costs and expenses that may be incurred in carrying out ongoing management activities and/or undertaking remedial action.

These considerations ensure that environmental authority holders will not be required to complete a risk management plan where there are no residual risks, or where the guideline does not require them to use a stated way, such as a particular methodology, to calculate the potential costs and expenses of ongoing management activities and/or remedial actions. These stated ways will include using the residual risk calculation tool or an expert panel process. It is intended that some applicants will not be required to use these stated ways to calculate their costs and expenses, which will minimise administrative burden and remove the need to develop a risk management plan for these sites.

The risk management plan must be in the approved form and include all information required to manage the land after the environmental authority is surrendered (e.g. ongoing management

activities and potential remedial activities, assumptions made in relation to the residual risk activities and spatial information of the land).

The risk management plan must also include details of the consultation the environmental authority holder has undertaken with owners and occupiers of the land. Affected owners and occupiers should be consulted about any assumptions made in relation to the rehabilitation or future use of the land and the future management actions to be carried out on the land. This will ensure that, where residual risks are to be noted on land title, relevant parties are consulted and notified of the assumptions and future management associated with the land.

The estimated costs and expenses associated with carrying out ongoing management activities and remedial action, calculated under the residual risk assessment guideline, must also be included in the risk management plan. The estimated costs and expenses will be the sum of costs and expenses associated with undertaking ongoing management activities and remediation activities required due to credible risk events.

Under section 264A(2), if a site management plan exists for the land being surrendered, and there is an overlap between the management requirements in this plan and the post-surrender management report (e.g. if both documents state that water monitoring must be carried out for the same site feature), the post-surrender management report must include details about how these activities will be carried out and managed.

Generally, the information provided in the post-surrender management report was previously required by the final rehabilitation report or post-mining management report. The collation of this information into a single report is important to capture the future management and remediation requirements for the surrendered resource site in one place, and will also allow for more efficient assessment of a surrender application for a resource activity.

Amendment of s 267 (Advice from MRA chief executive about surrender application)

Clause 56 amends section 267 of the EP Act to allow the administering authority to seek advice about the post-surrender management report from the chief executive administering the resource legislation. Any advice must be sought prior to making a decision about the surrender application. The term 'resource legislation' is defined in Schedule 4 of the EP Act and includes the *Mineral Resources Act 1989, Petroleum and Gas (Production and Safety) Act 2004, Greenhouse Gas Storage Act 2009* and *Geothermal Energy Act 2010.* The chief executive administering the resource legislation will be responsible for managing residual risks on surrendered resource sites. It is therefore important that the administering authority is able to seek advice from this chief executive to ensure the report includes all the relevant information they require to manage residual risks on site following surrender.

If the relevant chief executive provides advice on the post-surrender management report, the advice must be provided within the time periods specified in section 266(2) of the EP Act for it to be considered by the administering authority.

Amendment of s 268 (Criteria for decision generally)

Clause 57 amends section 268 of the EP Act to require the administering authority, when deciding a surrender application, to also consider:

- any post-surrender management report that exists for the application; and
- any advice provided under section 267 by the chief executive administering the resource legislation.

Much of the information located in the new post-surrender management report was previously located in the final rehabilitation report and had to be considered at surrender.

This amendment extends the decision-making criteria to the post-surrender management report to ensure that the report, and any advice provided by the resource chief executive on the report, is appropriately considered when making a decision about a relevant surrender application.

This clause also removes a reference to 'certified rehabilitated area' and replaces it with 'certified area'. As with the amendments made to other sections of the EP Act through this Bill, the removal of the reference to 'rehabilitated' makes it clear that both non-use management areas and rehabilitated areas can be progressively certified.

Amendment of s 271 (Payment may be required for residual risks of rehabilitation)

Clause 58 amends the heading of section 271 of the EP Act to remove the reference to 'rehabilitation'. This amendment clarifies that residual risk payments are not just for rehabilitated areas, but are also intended to capture non-use management areas.

This clause also amends section 271 to allow the administering authority to require a residual risk payment to be made to another entity that performs functions under the EP Act. An example of another entity that may collect a residual risk payment is the scheme manager under the MERFP Act. Currently, the residual risk payment may only be made to the administering authority. Given that the scheme manager will be responsible for managing the residual risk payments in a scheme fund, it is also practical that the scheme manager be able to receive the payments directly to avoid double handling of the payments.

If an environmental authority holder is required to make a residual risk payment under section 271, a surrender does not take effect until this requirement has been complied with.

An amendment is also made to section 271(4) as residual risk payments will no longer be collected at progressive certification.

Amendment of s 273 (Amount and form of payment)

Clause 59 amends section 273 so that the administering authority must have regard to the residual risk assessment guideline in deciding the residual risk payment amount. The residual risk assessment guideline is a new guideline under development by the administering authority and will provide more clarity and certainty regarding the identification and calculation of residual risks.

This section is also amended to replace the term 'likely rehabilitation costs' with 'likely management costs' to better reflect the original intent of the provisions. The intent was that the residual risk payment was to reflect the total likely costs and expenses associated with ongoing environmental management and remedial action (which includes rehabilitation and restoration). Section 272 describes actions taken to protect the environment as including the

maintenance of environmental management processes. The term 'likely management costs' better reflects the various components of the payment.

Ongoing management and remedial actions apply to both rehabilitated areas and non-use management areas. Ongoing management can include:

- monitoring and maintaining the condition of the land (for example, monitoring stability of the land and fitness of the land for its intended use);
- monitoring and maintaining structures on, or features of, the land (for example, taking remedial or replacement action to ensure equipment performs its intended purpose); and
- monitoring the quality of emissions such as water releases.

Amendment of s 275 (Steps after deciding surrender application)

Clause 60 amends section 275 to require the administering authority, within 10 business days after deciding to approve a surrender application, if a post-surrender management report exists, to:

- record the post-surrender management report in the relevant register; and
- give each owner or occupier of the land to which the report relates written notice of the existence of the report.

Recording documents on the relevant public register is standard practice under the EP Act to provide transparency around decisions made by the administering authority. It is important that information on residual risks and their management can be made available to current and potential future property owners. Notifying the owner or occupier ensures that they are aware of the intended uses of the land, any management constraints, and that the State may be carrying out ongoing management or remedial activities on the land in future.

Insertion of new s 275B

Clause 61 inserts new section 275B into chapter 5, part 10 of the EP Act to require the administering authority to record residual risks on the relevant land title. Specifically, new section 275B requires that the existence of the post-surrender management report be recorded on the relevant land title if section 264A required a risk management plan.

Stakeholder feedback on the *Managing Residual Risks in Queensland Discussion Paper* showed very strong support for a post-surrender management report that was apparent on the land title. Recording the existence of a post-surrender management report with an associated risk management plan on title will ensure that current and prospective landholders are aware, through a title search, that ongoing management and remedial activities may be carried out by the State on the land. It will also advise current and prospective landholders of where further information regarding residual risks associated with the land can be obtained (i.e. from the administering authority). This will enable prospective owners to be aware of any residual risk requirements attached to the land.

New section 275B will also require these particulars to be removed from the land title should the residual risks no longer exist on the land in the future.

Insertion of new s 284AA

Clause 62 inserts a new section so that the administering authority can cancel a suspended environmental authority for non-payment of annual fees. The administering authority must not move to cancel the environmental authority until a minimum of 20 business days has passed since the suspension.

Currently, the administering authority needs to 'undo' a suspension prior to cancelling the environmental authority. The new section will remove this unnecessary administrative step. The administering authority will still be required to follow the procedure for cancellation under chapter 5, part 11, division 2.

Once the administering authority starts the cancellation procedure by providing a notice of its proposal to cancel the environmental authority, the environmental authority remains suspended until either the holder pays the outstanding annual fees so the suspension period ends, or the procedure is completed and the environmental authority is cancelled (whichever occurs first).

Amendment of s 291 (Plan of operations required before acting under petroleum lease)

Clause 63 amends section 291 to make it clear that a current plan of operations (whether it be an original or replacement plan of operations) is required in order to undertake petroleum activities under a petroleum lease.

An operator cannot act under a petroleum lease with a plan of operations for which the plan period has passed. The amendments make it clear that the existing penalty in section 291 applies to an environmental authority holder that has not replaced an expired plan of operations, yet continues to undertake activities on a petroleum lease. The replacement plan is to be given to the administering authority (under section 293) at least 20 business days before the original plan ends (or a shorter period agreed by the administering authority).

Amendment of s 293 (Amending or replacing plan)

Clause 64 makes an amendment to section 293(2)(b)(i) to clarify that replacement plans must be provided in the approved form and comply with section 292(1)(b)-(d). This ensures that the requirements for a replacement plan are consistent with the requirements that apply for a new plan of operations.

This clause also makes a consequential amendment for the amendment to section 291. It inserts a note in section 293 to refer to section 291(b) which states when a replacement plan is to be given to the administering authority.

Amendment of s 300 (Making ERC decision)

Clause 65 amends the timeframes for making an ERC decision where the ERC decision is related to a de-amalgamation application. This amendment ensures that all ERC decisions for any one de-amalgamation application are made at the same time. This is intended to support business arrangements for environmental authority holders.

The amendment to section 300 provides that where an ERC decision being made relates to a de-amalgamation application, the ERC decision:

- must be made within the longer of the periods in section 300(3) that applies to any of the ERC decisions for the de-amalgamation application; and
- at the same time as all other ERC decisions for the de-amalgamation application.

This clause also amends section 300(5) so that an ERC decision related to a de-amalgamation application cannot take effect until the de-amalgamation takes effect. Under the pre-amended section 300(5), the ERC decision would take effect on the day the ERC decision was made. Where a de-amalgamation does not take effect until after the day the ERC decision is made because of the operation of section 250D, it is important that the ERC decision does not take effect on the day the ERC decision is made. It would not be appropriate for an ERC decision to be in effect for a de-amalgamated environmental authority that is not in effect.

Amendment of s 303 (Administering authority may direct holder to re-apply for ERC decision)

Clause 66 inserts an additional ground for the administering authority to be able to direct an environmental authority holder to re-apply for an ERC decision. If an ERC decision is found to be made on the basis of materially incorrect or misleading information, the administering authority may request that the holder re-apply for an ERC decision under section 298 of the EP Act. An ERC decision that has been made with materially incorrect or misleading information presents a financial risk to the State, so it is important that the administering authority is able to require a new ERC decision if these circumstances arise.

This clause also omits provisions in section 303 that refer to de-amalgamation so that the administering authority is not able to direct an environmental authority holder to re-apply for an ERC decision following de-amalgamation. This amendment is made because, under the amendments to section 250B in this Bill, de-amalgamation applications will now need to be accompanied by applications for an ERC decision.

Amendment of s 304 (When holder must re-apply for ERC decision)

Clause 67 corrects a cross-reference error in section 304(1)(c).

This clause also amends section 304 to remove the requirement for an environmental authority holder to re-apply for an ERC decision following the approval of a de-amalgamation application. This amendment is made because, under the amendments to section 250B in this Bill, de-amalgamation applications will now need to be accompanied by applications for an ERC decision.

The pre-amended section 304 required the holder of an environmental authority to re-apply for an ERC decision within 10 business days after the administering authority issued de-amalgamated environmental authorities to the holder. While this provision was intended to ensure that a new ERC decision reflecting accurate likely rehabilitation costs and expenses would be assigned to each new environmental authority following de-amalgamation, in practice a holder may fail to comply with this provision or a new ERC decision may not be made before the holder enters insolvency arrangements.

Replacing the requirement for a holder to re-apply for an ERC decision after a de-amalgamation with a requirement for a holder to make applications for an ERC decision with a de-amalgamation application ensures that the ERC in effect for de-amalgamated environmental authorities reflects likely rehabilitation costs and expenses from the time the de-amalgamation takes effect.

Amendment of s 306 (Effect of amalgamation or de-amalgamation of environmental authority on ERC decision)

Clause 68 amends section 306 so that this section no longer prescribes the effect of de-amalgamation on an ERC decision.

Under the pre-amended section 306, when an environmental authority is de-amalgamated, new ERC decisions are taken to have been made, splitting the ERC amount for the original environmental authority evenly between the newly created environmental authorities until a new ERC decision is made. An equal split of ERC between de-amalgamated environmental authorities can lead to a situation where the ERC does not reflect the rehabilitation liability of each of the new authorities. This is contrary to the intent of the ERC framework, whereby the ERC decision should reflect the likely costs and expenses that the Queensland Government may incur when taking action to rehabilitate or restore and protect the environment because of environmental harm caused by a resource activity. One of the de-amalgamated environmental authorities may have higher likely rehabilitation costs and expenses than another de-amalgamated environmental authority.

With the amendments to section 250B in this Bill, de-amalgamation applications will now need to be accompanied by applications for an ERC decision. The removal of provisions in section 306 relating to de-amalgamation are consequential to this amendment and ensures that the ERC decision in effect accurately reflects rehabilitation liability immediately following a de-amalgamation.

Relocation and renumbering of ch 5A, pt 3 (Codes of practice)

Clause 69 relocates and renumbers chapter 5A, part 3. This part should not be located in chapter 5A as this chapter is for provisions relating to ERAs. Codes of practice are generally intended to be used for activities that are not ERAs.

Amendment of s 318F (Application for registration)

Clause 70 amends section 318F so that only a person (as defined under the *Acts Interpretation Act 1954*) can apply to be registered as a suitable operator. Under the pre-amended EP Act, an entity could apply for registration, which meant that unincorporated bodies could apply. Unincorporated bodies should not be able to carry out an ERA as they are non-legal entities. This amendment is related to the amendment to section 116 (see clause 9) that prevents unincorporated bodies from applying for an environmental authority.

Amendment of s 318R (Investigation of applicant suitability or disqualifying events)

Clause 71 corrects a minor error in section 318R(1)(b). Subsection (1) refers to investigating a person or another *entity*, while subsection (1)(b) refers to a disqualifying event happening in relation to the person or another *person*.

Section 318R(2) and (3) are also corrected to ensure consistency with subsection(1).

Replacement of ch 5A, pt 6, hdg, ch 5A, pt 6, div 1, hdg and ch 5A, pt 6, div 1, sdiv 1, hdg

Clause 72 replaces various headings in chapter 5A, part 6 to replace references to 'progressive rehabilitation' with 'progressive certification'. The replacement of this term makes it clear that both rehabilitated areas and non-use management areas can be progressively certified. The current reference to 'rehabilitation' could be seen to exclude the ability to progressively certify non-use management areas. In certain instances, the EP Act allows for non-use management areas to remain on a resource site at surrender. This means that certain areas covered by the environmental authority may not be completely 'rehabilitated' to support a post-surrender land use. The distinction between these land use outcomes was introduced through amendments to the EP Act contained in the MERFP Act. The amendments in the MERFP Act have required the changes in this clause to clarify that the intent remains that all areas that meet their agreed final outcomes (i.e. all their rehabilitation or management milestones) can be progressively certified.

Amendment of s 318Z (What is progressive certification)

Clause 73 amends section 318Z of the EP Act to remove the reference to 'certified rehabilitated area' and replace it with 'certified area'. As with the amendments made to other parts of chapter 5A through this Bill, the removal of the reference to 'rehabilitated' makes it clear that both non-use management areas and rehabilitated areas can be progressively certified.

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

Clause 74 amends section 318ZD of the EP Act to remove the reference to 'progressive rehabilitation report' and replace it with 'progressive certification report'. It also removes the reference to 'proposed certified rehabilitated area' and replaces it with 'proposed certified area'. As with the amendments made to other parts of chapter 5A through this Bill, the removal of the reference to 'rehabilitation' makes it clear that both non-use management areas and rehabilitated areas can be progressively certified.

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

Clause 75 replaces section 318ZF so that the 'progressive rehabilitation report' becomes the 'progressive certification report' and so that this section no longer makes reference to the post-mining management report or the requirement to include an environmental risk assessment.

New section 318ZF lists the requirements for a progressive certification report. The progressive certification report replaces the progressive rehabilitation report in the pre-amended section 318ZF (see clause 74 which amends section 318ZD). New section 318ZF also replaces the

term ‘proposed certified rehabilitated area’ with ‘proposed certified area’. These changes in terminology clarify that environmental authority holders can progressively certify both rehabilitated areas and non-use management areas provided they meet all the relevant requirements.

There are some differences between the requirements for a progressive certification report under the new section 318ZF and the requirements for a progressive rehabilitation report in the pre-amended section 318ZF. The progressive certification report does not need to include an environmental risk assessment of the land. The environmental risk assessment was used to determine the residual risks on the site. Given that residual risks are not relevant to progressive certification (see clause 78 which omits chapter 5A, part 6, division 2), the requirement for an environmental risk assessment is removed.

The new section 318ZF also does not contain the requirement for relevant environmental authority holders to provide information relating to residual risk. Again, this is because residual risk will no longer be considered at progressive certification. Instead, environmental authority holders with a PRCP schedule must demonstrate how the relevant rehabilitation and management milestones under the PRCP schedule have been achieved and the extent to which the relevant PRCP schedule conditions have been complied with.

An environmental authority holder may have a non-use management area included in their PRCP, where they meet certain criteria set out in section 126D of the EP Act. For each non-use management area, the PRCP must state each management milestone for the area and when each management milestone is to be achieved. The intent is that when all management milestones have been met, and any other relevant requirements for the area are achieved, the non-use management area may be progressively certified.

Amendment of s 318ZI (Criteria for decision)

Clause 76 amends section 318ZI to remove the requirement for the administering authority to consider the environmental risk assessment when deciding a progressive certification application. The role of the environmental risk assessment was to assess residual risks. As mentioned above, residual risk will no longer be considered at progressive certification. Therefore, the environmental risk assessment does not need to be provided, or considered, as part of the progressive certification application.

This clause also amends section 318ZI to remove the reference to:

- ‘progressive rehabilitation report’ and replace it with ‘progressive certification report’;
- ‘certified rehabilitated area’ and replace it with ‘certified area’; and
- ‘proposed certified rehabilitated area’ and replace it with ‘proposed certified area’.

As with the amendments made to other parts of chapter 5A through this Bill, the removal of the reference to ‘rehabilitated’ and ‘rehabilitation’ makes it clear that both non-use management areas and rehabilitated areas can be progressively certified. Minor amendments have also been made to section 318ZI(2) to clarify the requirements for the administering authority to provide progressive certification of an area.

Amendment of s 318ZJ (Steps after making decision)

Clause 77 amends section 318ZJ to replace the reference to 'certified rehabilitated area' with 'certified area'. As with the amendments made to other parts of chapter 5A through this Bill, the removal of the reference to 'rehabilitated' makes it clear that both non-use management areas and rehabilitated areas can be progressively certified.

This clause also amends section 318ZJ to remove the provision that refers to a residual risk payment for a proposed certified rehabilitated area. This reflects other amendments in this Bill which remove provision for a residual risk payment for progressive certification.

Omission of ch 5A, pt 6, div 2 (Payment for residual risks of rehabilitation)

Clause 78 omits chapter 5A, part 6, division 2 to remove the power for the administering authority to collect a residual risk payment at progressive certification. Residual risk will no longer be considered at progressive certification as the responsibility for the site remains with the environmental authority holder. Therefore, the State does not need to collect a payment at progressive certification for residual risk as it does not have responsibility for managing the resource site until the area is surrendered.

Progressive certification was introduced with the intent of increasing certainty for resource companies around closure of their site. Under the EP Act, once an area is certified it must be maintained by the resource company at the same standard it was certified until the environmental authority is surrendered.

The residual risk framework will still apply to areas that have been progressively certified, however, the calculation and payment of residual risks will only occur at surrender of the environmental authority.

Amendment of s 320A (Application of div 2)

Clause 79 corrects errors in section 320A to ensure the section correctly reflects the intent.

Pre-amended section 320A(2)(a)(i) incorrectly states that the duty to notify applies to an owner or occupier of *contaminated* land. The duty should apply to an owner or occupier of any land. This is because it is important that the administering authority and other relevant persons are notified of incidents that may be likely to cause land to become contaminated land, so that early action can be taken to, for example, manage or monitor the land. An amendment is made to reflect the intent.

Section 320A(2)(b)(i) and (iii) are also corrected to refer to any land, not just contaminated land.

There are further errors in pre-amended sections 320A(2)(b)(iii) and 320A(3)(a) insofar as the duty to notify for a notifiable activity only applies where the notifiable activity is causing, or is reasonably likely to cause, serious or material environmental harm. The intent was that the mere carrying out of a notifiable activity would trigger the duty to notify, and that it should not be limited by the requirement that it be causing, or is reasonably likely to cause, serious or material environmental harm. Therefore, the references to this latter requirement are removed.

Amendment of s 363F (Definitions for pt 5B)

Clause 80 corrects an error in section 363F. All of the circumstances in paragraph (b) of the definition refer to activities, events or changes on land that is contaminated land. Therefore, the reference to the administering authority being satisfied that the activities, events or changes have caused, or are likely to cause, the land to become contaminated land is an error. Paragraph (b) is only concerned with activities, events or changes on contaminated land that cause, or may cause, other land to become contaminated land.

It is important to note that the carrying out of an activity on contaminated land, the happening of an event on contaminated land, or a change in the condition of contaminated land that has caused, or is likely to cause, serious or material environmental harm is captured by paragraph (a) of the definition of 'contamination incident'.

Insertion of new ch 8A

Clause 81 inserts a new chapter 8A into the EP Act to enable the appointment of a statutory Rehabilitation Commissioner.

Chapter 8A Rehabilitation Commissioner

Part 1 Appointment

Section 444A Appointment

This section allows for the appointment of a person into the statutory position of 'rehabilitation commissioner'. The appointment is made by the Governor in Council, upon the recommendation of the relevant Minister. The Minister must be satisfied that the person is appropriately qualified to perform the functions of the role. The Commissioner is appointed under the EP Act and not under the *Public Service Act 2008*. The appointment may be on a full-time or part-time basis.

The appointment is made by the Governor in Council upon the recommendation of the Minister because the Rehabilitation Commissioner will be independent of the administering authority and will report directly to the Minister.

Section 444B Term of appointment

This section provides for the term of appointment to be decided by the Governor in Council (usually as part of the appointment under section 444A). The term of appointment must be at least one year and less than five years. However, the Commissioner may be reappointed for additional terms. This will allow for some certainty of appointment, while allowing for flexibility and reassessment of the role over time.

Section 444C Remuneration and conditions

This section provides for the remuneration, and other terms and conditions of the appointment, to be decided by the Governor in Council (usually as part of the

appointment under section 444A). In practice, this is done via a significant appointment submission from the relevant Minister, so it is on the recommendation of the Minister. The terms and conditions could also specify key performance indicators or a performance agreement for the term of appointment.

Section 444D Leave of absence

This section provides a process for the Rehabilitation Commissioner to take a leave of absence. This could be for recreation leave, or a longer leave of absence. The leave of absence must be approved by the Minister. This recognises that it would be administratively burdensome to require the Governor in Council to approve a leave of absence and the Minister would appoint any acting Commissioner to carry out the duties of the role in the Commissioner's absence (see section 444G below).

Section 444E Vacancy in office

This section specifies when the statutory office of the Rehabilitation Commissioner becomes vacant. It ensures that the Commissioner can resign by signed notice to the Minister, and that a new Commissioner can be appointed if a Commissioner is removed from office under section 444F. The statutory office also becomes vacant during a period of suspension under section 444F(3).

Section 444E ensures that a new Commissioner or acting Commissioner can be appointed by defining when the office is vacant. Note that while a leave of absence is not included in this section, an acting Commissioner can also be appointed during that period.

Any acting appointment is also governed by the *Acts Interpretation Act 1954* (section 24B) and so, because the EP Act is authorising appointment during a vacancy in the office under this section, an appointment of an acting Commissioner can be made whether or not an appointment has previously been made to the office.

Section 444F Removal from office

This section provides for when the Governor in Council may remove a Commissioner from office, or when the Minister can suspend a Commissioner from office.

The Governor in Council, on the recommendation of the Minister, can remove the Rehabilitation Commissioner from office on the grounds of proven misconduct, incapacity, or negligence in carrying out their duties.

The Minister may suspend the Rehabilitation Commissioner for up to 60 days for the investigation of an allegation of misconduct, incapacity, or negligence in carrying out their duties.

Misconduct is not defined but relies on the ordinary meaning of the word. It could include conduct such as the Commissioner not meeting their statutory functions, acting outside their jurisdiction, mismanaging a conflict of interest, or not complying with the terms and conditions of their employment.

Section 444G Acting rehabilitation commissioner

This section allows for the Minister to appoint an acting Commissioner during a vacancy in office or during periods when the Commissioner is absent from duty. This appointment is also under the EP Act, and not the *Public Service Act 2008*. This allows an acting Commissioner to also be independent of the administering authority, and to be subject to similar terms and conditions (including performance agreements) as a Commissioner.

Any acting appointment is also governed by the *Acts Interpretation Act 1954* (section 24B) and so the preservation of rights will therefore also apply to an acting Rehabilitation Commissioner.

Section 444H Preservation of rights

This section ensures that a public servant does not lose any rights due to appointment to the role of the Rehabilitation Commissioner. This is required because the Commissioner is appointed under the EP Act and not under the *Public Service Act 2008*. Consequently, without this section, an appointment of a public servant to the statutory role could be taken to be a break in service. This section would also apply to any acting Commissioner due to the *Acts Interpretation Act 1954* (section 24B).

Part 2 Functions and powers

Section 444I Functions

This section describes the functions of the Rehabilitation Commissioner. These functions include:

- providing advice to the Minister on:
  - rehabilitation and management practices, outcomes and policies; and
  - public interest evaluation processes and performance;
- developing technical and evidence-based reports on complex aspects of best practice rehabilitation and management of non-use management areas;
- providing guidance on the interpretation of advice or reports prepared under the above functions (only if the chief executive requests such advice and the Commissioner considers it appropriate to provide such advice);
- monitoring and providing reports to the Minister on rehabilitation performance and trends;
- consulting on, and raising awareness of, rehabilitation and management matters; and
- chairing workshops and forums about technical, scientific or engagement matters.

As outlined in section 444L, only the last two functions listed above can be delegated by the Rehabilitation Commissioner to an appropriately qualified member of their staff. In addition, a request for advice from the Commissioner must be made by the chief executive and cannot be delegated under section 516 of the EP Act.

In providing guidance to the chief executive, the Rehabilitation Commissioner will be supporting the adequate interpretation of advice and reports. The Rehabilitation Commissioner will not provide direct guidance on the application of advice or reports to a specific site, but can provide guidance on the interpretation of advice or reports, if appropriate. This will support the chief executive in interpreting the specific meaning of any advice and reports if there is any uncertainty.

Section 444I also states that the functions of the Commissioner includes other functions given to the Commissioner under the EP Act. This is required because there are other sections, such as new section 444K (requiring the publication of reports, advice and guidance), that prescribe additional functions of the Rehabilitation Commissioner.

The Commissioner must carry out their role with the appropriate consideration of human rights under the *Human Rights Act 2019*, including recognising the unique interests of Traditional Owners. In addition, section 6 of the EP Act requires that the Commissioner (as a person who is administering functions under the EP Act) consult with, and have regard to the view and interests of Aborigines and Torres Strait Islanders under Aboriginal tradition and Island custom.

Traditional Owners have unique interests regarding mine site rehabilitation that stems from their connection to their country. This may include, for example, priorities for rehabilitation that relate to valued species, or spiritual significance of particular land formations. Traditional Owners may also hold particular expertise regarding rehabilitation of their country. Stemming from this expertise, there may be the potential to support economic opportunities for Traditional Owners in rehabilitation or from a post-mining land use. This may include, for example, procurement opportunities prior to mine closure or as part of the rehabilitation.

The Commissioner's functions in providing advice to the Minister, and in consulting on and raising awareness of rehabilitation and management matters, should facilitate the engagement of Traditional Owners where relevant in mine site rehabilitation and recognise the unique interests of Traditional Owners in relation to mine site rehabilitation.

Section 444J Powers

This section ensures that the Commissioner has the powers of a natural person to do all of the following:

- enter into contracts or agreements;
- engage consultants or contractors;
- appoint agents and attorneys; and
- do anything else necessary or convenient in the performance of their functions (including accessing the information necessary or convenient to perform its functions).

An example of an agreement that the Rehabilitation Commissioner may enter is a confidentiality agreement to protect information provided by a third party to the Commissioner. The intent is that on a case by case scenario, the Rehabilitation Commissioner may request information from industry or other stakeholders subject to a confidentiality agreement, so that the Rehabilitation Commissioner must not share

particular information covered by the agreement with other stakeholders or with other government bodies and the chief executive. In terms of maintaining the confidentiality of information, it is noted that the Rehabilitation Commissioner and the staff of their Office will be required to comply with the usual provisions of the *Information Privacy Act 2009* and are also bound by the *Public Sector Ethics Act 1994* (as the Rehabilitation Commission is an office established under an Act).

Section 444K Publication of advice, reports and guidance

This section states that the Rehabilitation Commissioner must publish the advice, reports and guidance prepared in the exercise of its functions under section 444I(a) to (d). However, no confidential information must be included in the published documents.

This section will ensure there will be public visibility of the products prepared by the Rehabilitation Commissioner. The advice, reports and guidance will be made available on a Queensland Government website as soon as possible after they are finalised.

Section 444L Delegation

This section allows the Commissioner to delegate some of their functions to an appropriately qualified member of their staff. Under section 444M(2) the staff of the Commissioner are also independent from the administering authority in that the staff report only to the Commissioner (not the chief executive) in relation to the performance of the Commissioner's functions.

The functions that may be delegated include:

- consulting on, and raising awareness of, rehabilitation and management matters; and
- chairing workshops and forums about technical, scientific or engagement matters.

The following functions may not be delegated:

- providing advice to the Minister on:
    - rehabilitation and management practices, outcomes and policies; and
    - public interest evaluation processes and performance;
- developing technical and evidence-based reports on complex aspects of best practice rehabilitation and management of non-use management areas;
- providing guidance on the interpretation of advice or reports prepared under the above functions; and
- monitoring, and providing reports to the Minister on, rehabilitation performance and trends.

This is to ensure that, while the staff of the Rehabilitation Commissioner would be likely to be involved in the preparation of advice, guidance and reports, the final advice, guidance or report remains the sole responsibility of the statutory position and therefore independent of the administering authority.

Section 444M Staff services from government agency

This section provides for the secondment of staff to be part of the Rehabilitation Commissioner's staff. It is intended that the Rehabilitation Commissioner will lead an office of dedicated staff who will be public servants under the *Public Service Act 2008*. To ensure that the staff of the Office retain a degree of independence, this section also specifies that the staff of the Office are not subject to the direction of the chief executive in relation to their work.

Section 444N Ministerial direction

This section allows the Minister to issue the Commissioner with a written direction about the performance of the Commissioner's functions. This is consistent with the Ministerial directions that may be issued to a statutory authority and ensures that the Commissioner, while independent of the administering authority, remains subject to Parliamentary oversight (via the Minister). Ministerial directions under this section, and the action taken pursuant to the direction, must be published in the Commissioner's annual report.

As this is not a power to be exercised lightly, this power cannot be delegated under section 515 of the EP Act.

Section 444O Annual report

This section requires the Rehabilitation Commissioner to prepare an annual report about the operation of the position and the Office each year. The report should be given to the Minister as soon as possible after the end of the financial year, but must be given to the Minister no later than four months after the end of the financial year (i.e. 30 October).

The report must include details of the following:

- the performance of the Commissioner's functions and the exercise of their powers;
- rehabilitation performance and trends;
- the administration of chapter 8A;
- details of *Integrity Act 2009* interests and actions; and
- details of any Ministerial direction given under section 444N and the actions taken.

Details of administration would include details on the financial operation of the position.

As a statutory office holder, the Commissioner will be bound by the *Integrity Act 2009*. Consequently, the Commissioner will be required to disclose any conflicts of interest under section 72D of that Act.

The annual report must not include confidential information.

The Minister must table the report in Parliament within 14 sitting days of receiving it.

In practice, it is anticipated that the annual report would also be published on a Queensland Government website (in addition to being published on the Queensland Parliament website). However, since the annual reports of other Queensland Government entities do not require this by legislation, it has also not been prescribed by legislation for this annual report.

Amendment of s 515 (Delegation by Minister)

Clause 82 amends section 515 of the EP Act to ensure that the power of the Minister to issue a direction to the Rehabilitation Commissioner (section 444N) cannot be delegated. This amendment is made because this power is not administrative in nature and keeping it within the Minister's power only is aligned with how such directions are issued to statutory authorities.

Amendment of s 516 (Delegation by chief executive)

Clause 83 amends section 516 of the EP Act to ensure that the power of the chief executive to ask the Rehabilitation Commissioner for guidance (section 444I(c)) cannot be delegated. This amendment is made because a request to the Rehabilitation Commissioner for guidance can only be approved by the Rehabilitation Commissioner (i.e. the Rehabilitation Commissioner's function is not delegated), so it would not be appropriate for an officer of the administering authority to be issuing the request.

Amendment of s 521 (Procedure for review)

Clause 84 makes amendments to section 521 to provide for a more administratively sound process for internal review applications, particularly for where there are multiple internal review applications for a single decision.

Section 521(3) is amended so that the administering authority (rather than the applicant) is required to provide notice of an internal review to relevant other persons. This is appropriate because it is the administering authority that holds the contact details of these other persons. The administering authority can provide either a copy of the application and supporting documents or details of where the application and supporting documents may be accessed. Allowing the administering authority to provide details of where the relevant documents can be accessed, rather than having to always provide a copy of the documents, will reduce the administrative burden for the administering authority, which is important particularly where there are a large number of persons to notify.

Under section 521(3), the administering authority must send the review notice within five business days of the review application period(s) ending. The review application period is the period in which a dissatisfied person may make an application for internal review as specified under section 521(2)(a). This will mean that if there are multiple review applications for one original decision, all review notices can be sent at the same time.

Section 521(4) is amended so that submissions on an internal review application are to be made within five business days of the administering authority sending the review notice (rather than within five business days of the review application being made). This amendment is required because, under the amendments to section 521(3), the review notice may not be received until more than five business days after the review application being made.

Section 521(5) is amended so that the existing process for making a review decision applies only where the administering authority receives one review application that complies with section 521(2). An additional provision is inserted that states the process for making a review decision where more than one review application complying with section 521(2) is received in relation to the same original decision. This provision clarifies that only one review decision needs to be made where there are multiple review applications for an original decision. The administering authority will continue to be required to consider all submissions on the review applications in making its review decision.

The definition of 'decision period' is amended so that the administering authority is able to extend the decision period by up to five business days in special circumstances. The definition also required amendment to reflect amendments related to making only one review decision for multiple applications and to account for the amended timeframes for providing the review notice and making submissions.

This clause also makes amendments to the references to persons 'given notice of the original decision' in sections 521(3) and 521(8) to clarify that it is persons given notice under the EP Act. This change puts beyond doubt that the provisions are limited to persons who were required to be given notices under the Act, in reliance on the definition of 'under' in the *Acts Interpretation Act 1954*.

Amendment, relocation and renumbering of s 522 (Stay of operation of particular original decisions)

Clause 85 amends section 522 to clarify that this section is concerned with the stay of original decisions during an internal review of an original decision. The test for granting a stay in section 522(2) is also amended. The section is relocated (and consequently renumbered to section 539A) so that all provisions relating to stays are contained in a new division in chapter 11, part 3. The intent of the section otherwise remains the same.

The Land Court, and the Planning and Environment Court, may stay an original decision only if the court considers the stay is desirable having regard to the interests of any person whose interests may be affected, any submission made by the entity that made the original decision and the public interest. This test represents a change from the existing test in section 522(2). The new test is akin to tests adopted in legislation such as the *Queensland Civil and Administrative Tribunal Act 2009*, *Motor Accident Insurance Act 1994* and *Medicines and Poisons Act 2019*. The test in section 522(2) (renumbered to section 539A(2) needs to continue to be considered in conjunction with section 522(5) (renumbered to section 539A(5)).

Section 522(4) (renumbered to section 539A(4)) is amended to clarify the maximum period of the stay. A stay can have effect for the duration of the internal review period and, if there is an appeal following the internal review, from the time of the internal review period ending and when the appeal may be started under the EP Act. In other words, the period of a stay under section 539A can extend from the internal review to the start of a later appeal, but no longer. Where a party wants a stay to apply during an appeal, they will need to apply for another stay. This further stay will be dealt with under section 535 of the EP Act, as amended through this Bill.

This clause also makes some consequential amendments to update cross-references as a result of other amendments in this Bill.

Amendment, relocation and renumbering of s 522A (Stay of decision about financial assurance)

Clause 86 relocates section 522A (and consequently renumbers it to section 539C) so that all provisions relating to stays are contained in a new division in chapter 11, part 3.

New section 539C is equivalent to existing sections 522A and 535B. Existing sections 522A and 535B are both concerned with the stay of decisions about financial assurance. Section 535B can be deleted and minor amendments can be made to section 522A so that the provisions about stays of financial assurance decisions are located in one section. The amendments to section 522A update the cross-reference to section 522 (which is renumbered to section 539A through clause 85) and inserts a cross-reference to new section 539B to reflect the omission of section 535B (through clause 93). This means that the new section 539C will apply to a stay of a financial assurance decision, whether the stay is granted under new section 539A or 539B.

Amendment, relocation and renumbering of s 522B (Stay of particular decisions if unacceptable risk of environmental harm)

Clause 87 relocates section 522B (and consequently renumbers it to section 539D) so that all provisions relating to stays are contained in a new division in chapter 11, part 3.

New section 539D is generally equivalent to existing sections 522B and 535C. Existing sections 522B and 535C are both concerned with the stay of particular decisions if there is an unacceptable risk of serious or material environmental harm. Section 535C can be deleted and minor amendments can be made to section 522B so that the provisions about these stays are located in one section.

The new section 539D will apply to a stay of decisions under section 316G, whether the stay is granted under new section 539A or 539B. The same applies for a stay of a decision to issue an environmental protection order.

Amendment, relocation and renumbering of s 522C (Effect of stay of ERC decision)

Clause 88 relocates section 522C (and consequently renumbers it to section 539F) so that all provisions relating to stays are contained in a new division in chapter 11, part 3.

New section 539F is generally equivalent to existing sections 522C and 529. Existing sections 522C and 529 are both concerned with the effect of a stay of an ERC decision. Section 529 can be deleted and minor amendments can be made to section 522B so that the provisions about the effect of these stays are located in one section.

The new section 539F will apply to a stay of an ERC decision, whether the stay is granted under new section 539A or 539B. ERC decisions stayed under either section 539A or 539B will remain in effect for both section 297 of the EP Act and for the MERFP Act. The requirement to give a surety of 75% of the amount required will also apply whether the ERC decision is stayed under section 539A or 539B.

A minor amendment is made to existing section 522C to clarify that it is the original decision, as confirmed or varied by any review decision, that is stayed.

Omission of s 529 (Effect of stay on particular decisions)

Clause 89 deletes section 529. New section 539F (see clause 88) contains provisions equivalent to section 529.

Amendment of s 533 (Appellant to give notice of appeal to other parties)

Clause 90 makes an amendment to the references to persons 'given notice of the original decision' in section 533 to clarify that it is persons given notice under the EP Act. This change puts beyond doubt that the provisions are limited to persons who were required to be given notices under the Act, in reliance on the definition of 'under' in the *Acts Interpretation Act 1954*.

Amendment, relocation and renumbering of s 535 (Stay of operation of decisions)

Clause 91 amends existing section 535 to clarify that this section is concerned with the stay of particular original decisions appealed to the Land Court, or Planning and Environment Court. The section is relocated (and consequently renumbered to section 539B) so that all provisions relating to stays are contained in a new division in chapter 11, part 3. The intent of the section otherwise remains the same.

Section 539B applies to the appeal of original decisions which cannot be internally reviewed under section 521 as well as the appeal of original decisions for which an internal review decision has been made. Where an original decision was subject to internal review before appeal, it is the original decision as confirmed or varied by the internal review that a person will seek to stay pending an appeal against a review decision.

The stay can only remain in effect up until the court decides the appeal.

Amendment, relocation and renumbering of s 535A (Stay of decision to issue a clean-up notice)

Clause 92 relocates section 535A (and consequently renumbers it to section 539E) so that all provisions relating to stays are contained in a new division in chapter 11, part 3.

A minor amendment is made to existing section 535A to update a cross-reference to section 535 (which is renumbered to section 539B through clause 91).

Omission of ss 535B and 535C

Clause 93 deletes section 535B and section 535C. New section 539C (see clause 85) contains provisions equivalent to section 535B. New section 539D (see clause 86) contains provisions equivalent to section 535C.

Insertion of new ch 11, pt 3, div 4

Clause 94 inserts a new division which will contain all provisions relating to stays.

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

Clause 95 amends section 540 to add a new requirement that the administering authority must keep a register of the post-surrender management reports received as part of the surrender application. As residual risks may exist on land into perpetuity, and ongoing management and remedial actions may be required, it is important that information on these aspects are available to the public.

Amendment of s 754 (Requirement for mining EA holders to give proposed PRC plan)

Clause 96 amends section 754 so that this section is more consistent with the original intent. Section 754 is a transitional provision for the MERFP Act. These transitional provisions were intended to capture all existing holders of an environmental authority issued for a site-specific application for a mining lease, and all existing site-specific applications for an environmental authority relating to a mining lease that were made before 1 November 2019 (known as 'the PRCP start date') and approved after commencement of the MERFP Act. This was to ensure that all environmental authorities issued for a site-specific application relating to a mining lease will be subject to the requirement for a PRCP.

Under the pre-amended EP Act, section 754 will not apply to an environmental authority application made before 1 November 2019 if that application is not approved within three years of the PRCP start date. Therefore, this clause amends section 754 so that a PRCP can also be requested within six months of an environmental authority being issued for relevant persons that become an environmental authority holder after 1 November 2022.

Insertion of new ss 765A and 765B

Clause 97 inserts new transitional provisions for the MERFP Act. These provisions are equivalent to provisions in the Environmental Protection (Financial Provisioning) (Transitional) Regulation 2019. This transitional regulation will expire on 1 April 2021, so relevant provisions need to be inserted in the EP Act so that they can continue to provide transitional arrangements where required beyond this date.

Section 765A Application of part if holder of environmental authority changes

This section is equivalent to section 4 of the Environmental Protection (Financial Provisioning) (Transitional) Regulation 2019.

Section 765B Application of s 431A for particular mining EA holders

This section is equivalent to section 5 of the Environmental Protection (Financial Provisioning) (Transitional) Regulation 2019.

Insertion of new ch 13, pt 30

Clause 98 inserts transitional provisions for the Environmental Protection and Other Legislation Amendment Bill 2020.

Part 30 Transitional provisions for Environmental Protection and Other Legislation Amendment Act 2020

Section 777 Definition for part

This section inserts definitions for chapter 13, part 29.

Section 778 Existing applications for environmental authorities

Section 778 states that environmental authority applications made, but not decided, before commencement are subject to the pre-amended chapter 5, parts 2 to 5. This maintains the status quo for the assessment process for applications which are in progress upon commencement.

Section 779 Existing amendment applications

Section 779 states that amendment applications made, but not decided, before commencement are subject to the pre-amended chapter 5. This maintains the status quo for the assessment process for amendment applications which are in progress upon commencement.

Section 780 Existing amalgamation and de-amalgamation applications

Section 780 states that amalgamation and de-amalgamation applications made, but not decided, before commencement are subject to the pre-amended chapter 5, part 8. This maintains the status quo for the assessment process for amalgamation and de-amalgamation applications which are in progress upon commencement.

Section 781 Existing transfer applications

Section 781 states that transfer applications made, but not decided, before commencement are subject to the pre-amended chapter 5, part 9. This maintains the status quo for the assessment process for transfer applications which are in progress upon commencement.

Section 782 Existing surrender applications

Section 782 provides that surrender applications made, but not decided, before commencement of the Bill proceed as if this Bill had not been enacted. This will ensure that environmental authority holders who have already applied to surrender their authority will not be captured by the new provisions introduced by this Bill.

Section 783 Existing suspension periods for environmental authorities

Section 783 states that for environmental authorities that were suspended on commencement, pre-amended chapter 5, part 11 applies to the environmental authority. This maintains the status quo for the suspension framework for environmental authorities which are suspended upon commencement.

Section 784 Existing de-amalgamated environmental authorities

Section 784 of the EP Act applies to environmental authorities that have been de-amalgamated prior to commencement, but prior to commencement the holder had not re-applied for an ERC decision for the authority. These holders will be required to comply with the pre-amendment EP Act (i.e. the holder will either be directed to re-apply for an ERC decision or will otherwise be required to re-apply for an ERC decision).

Section 785 Existing re-applications for ERC decisions

Section 785 applies to re-applications for an ERC decision where those re-applications were required because of a de-amalgamation. Re-applications that have been made, but not decided, before commencement are subject to the pre-amended chapter 5, part 14, division 1. This maintains the status quo for the assessment process for holders that have re-applied for an ERC decision because of a de-amalgamation if that assessment process is still in progress upon commencement.

Section 786 Application of s 303 to ERC decisions made before commencement

Section 786 provides a transitional provision to clarify that the new section 303(1)(c) inserted by this Bill applies regardless of whether the ERC decision was made pre-commencement or post-commencement.

Section 787 Application of provisions in relation to environmental authorities held by entities

Section 787 applies to environmental authorities held by entities that are not persons. As provisions in the EP Act are being amended through this Bill to reflect that non-entity persons will not be able to apply for an environmental authority following commencement, a transitional provision is required to clarify the application of particular provisions to environmental authorities held by existing non-entity persons, and also to non-entity persons that become an environmental authority holder after commencement (because an application for an environmental authority was made by a non-entity person before commencement, but this application was not decided before commencement). This transitional provision provides that references to a person in the context of a holder of an environmental authority include a reference to a non-entity person.

Section 788 Existing applications for registration of suitable operators

Section 788 states that applications for suitable operator registration made, but not decided, on commencement are subject to pre-amended chapter 5, part 4. This maintains the status quo for the assessment of applications which are in progress upon commencement.

Section 789 Existing progressive certification applications

Section 789 provides that progressive certification applications made, but not decided, before commencement of the Bill proceed as if this Bill had not been enacted. This will ensure that environmental authority holders who have already applied to progressively certify an area will not be captured by the new provisions introduced by this Bill.

Section 790 Existing review applications

Section 790 states that a review application made, but not decided, before commencement are subject to the pre-amended section 521. This maintains the status quo for the assessment process for review applications which are in progress upon commencement. Section 790 also makes provision for a situation where multiple review applications are made for one original decision, and some of those review applications are made pre-commencement and some post-commencement. If this happens, pre-amended section 521 applies to all of the review applications.

Section 791 Existing applications for stays

Section 791 states that stay applications made, but not decided, before commencement are subject to the pre-amended chapter 11, part 3. This maintains the status quo for the process for stay applications which are in progress upon commencement.

Amendment of sch 2 (Original decisions)

Clause 99 inserts new entries in schedule 2 for the decisions in new sections 73C(1)(a) and 227AAB(2). This ensures that these decisions are 'original decisions' and subject to internal review and/or appeal.

The decision under new section 73C(1)(a) is similar to the decision under existing section 143(2). Schedule 2 of the EP Act provides an internal review right for decisions made under section 143(2). For consistency, schedule 2 is amended to provide an internal review right for new section 73C(1)(a).

The new provisions about not properly made amendment applications (see new ss 227AAA-227AAC) are based on existing sections 127-129 about not properly made applications. The decision in section 128(2) has entries in schedule 2. For consistency, similar entries have been inserted for the decision in section 227AAB(2).

This clause also updates cross-references in the authorising provision and makes consequential amendments to reflect the amendment to section 318ZJA and omission of section 318ZL made through this Bill.

Amendment of sch 4 (Dictionary)

Clause 100 amends the dictionary in schedule 4 of the EP Act to insert definitions for new terms inserted through this Bill, remove definitions for terms omitted through this Bill, and to make other consequential amendments and minor corrections to existing definitions.

This includes amendments to the following definitions:

- ***anniversary day*** – to reflect the insertion of new section 247A and clarify that the anniversary day does not change merely because of a de-amalgamation.
- ***application documents*** **–** to ensure that the definition applies in relation to references in the EP Act to an application for a proposed PRCP or amendment application for an environmental authority or PRCP schedule. An amendment is also made so that the definition captures a proposed PRCP even where the proposed PRCP did not accompany the environmental authority application submitted under chapter 5, part 2 (and so was not part of the 'properly made application').
- ***environmental record*** **–** so that the definition clearly applies to all references to environmental record in the EP Act and is not limited to where the term environmental record is used in the context of an environmental authority holder.
- ***person*** – so that, except for the purposes of chapter 3, part 1, person is no longer defined in the EP Act. This means that the default definition from the *Acts Interpretation Act 1954* applies. The intended effect is that, together with amendments to other provisions in the EP Act to refer to 'person' instead of 'entity', only legal entities will be able to apply for an environmental authority and to be a registered suitable operator.
- ***proposed PRC plan*** **–** to reflect the amendment to section 125 which enables a site-specific application relating to a mining lease to be submitted without an accompanying proposed PRCP, and to clarify that a proposed PRCP must comply with the requirements in chapter 5, part 2, division 3.
- ***replacement environmental authority*** **–** clarifies that de-amalgamated environmental authorities are a replacement environmental authority.
- ***residual risks*** – to improve clarity and remove extraneous information (for example, the reference to a site management plan). The core premise of the definition has not been changed.

Definitions for new terms include:

- ***certified area***
- ***Great Barrier Reef catchment waters***
- ***rehabilitation commissioner*** – the definition cross references section 444A as inserted by this Bill. Note that, in context, a reference to the Rehabilitation Commissioner can include an acting Commissioner by virtue of sections 23(2) and 24B of the *Acts Interpretation Act 1954*.

Part 3 Amendment of Mineral and Energy Resources (Financial Provisioning) Act 2018

Act amended

Clause 101 states that this part amends the MERFP Act.

Amendment of long title

Clause 102 amends the long title of the MERFP Act so that this Act can also provide for the administration of the residual risks fund, including making payments for activities associated with managing residual risks on land that have arisen from former resource activities.

Amendment of s 3 (Main purposes)

Clause 103 amends section 3 of the MERFP Act to add an additional main purpose to the Act, which is to administer residual risk payments received by the State under the EP Act. Administration of the payments includes receiving, investing and disbursing residual risk payments. The residual risks fund is being established under the MERFP Act as stakeholders expressed their preference for residual risk payments to be administered by the same entity responsible for the Financial Provisioning Scheme. This reflected a view that the scheme manager has superior expertise in, as well as responsibility for, managing finances on behalf of the State and will be able to ensure funds are sustained into perpetuity.

Amendment of s 4 (How main purposes to be achieved)

Clause 104 amends section 4 of the MERFP Act to state how the main purposes of the Act are to be achieved in relation to the residual risk payments received. In relation to residual risk payments, the main purpose will be achieved through the establishment of a residual risks fund that will allow the scheme manager to, amongst other things, invest and make payments from the fund.

Amendment of pt 2, hdg (Establishment of scheme)

Clause 105 amends the part 2 heading to make it clear that this part contains provisions relating to the establishment of the residual risks fund.

Amendment of s 21 (Functions)

Clause 106 amends section 21 of the MERFP Act, which sets out the functions of the scheme manager. Amendments to this section include providing the scheme manager the power to:

- administer the residual risks fund; and
- set investment objectives for the residual risks fund, and establish investment strategies and policies to achieve the set objectives.

Amendments to this section also require the scheme manager to seek advice from the Long Term Asset Advisory Board or another entity nominated by the Treasurer when setting investment objectives for the whole, or part, of the residual risks fund. Amendments made by this Bill will ensure that the scheme manager has the same functions in relation to the scheme fund and the residual risks fund.

Insertion of new pt 2, div 3 (Functions)

Clause 107 inserts a new division 3 into part 2 of the MERFP Act to establish the residual risks fund.

Division 3 Residual risks fund

Section 24A Establishment of residual risks fund

New section 24A is inserted into the MERFP Act to establish the residual risks fund. The residual risks fund will be kept as part of the departmental accounts of Queensland Treasury. The fund can receive money from residual risk payments made under the EP Act. The residual risks fund can also receive funds from interest or return of investments made in relation to the fund. Amounts in the residual risks fund are considered controlled receipt for the *Financial Accountability Act 2009*. An amount can be paid to the requesting entity provided it is for the payment of a cost or expense related to the administration of the fund or carrying out residual risk activities.

Amendment, relocation and renumbering of s 71 (Scheme manager to keep Minister informed)

Clause 108 amends section 71, which states that the scheme manager must keep the Minister responsible for the MERFP Act reasonably informed on a range of matters about the scheme fund. Amendments to this section require the scheme manager to keep the same Minister reasonably informed on the operations, financial performance and financial position of the residual risks fund. Amendments to this section also require the scheme manager to inform the Minister responsible for the MERFP Act if a matter arises that may significantly affect the financial viability of the residual risks fund. This will allow decisions to be made quickly to manage financial risks to the State.

Section 71 is also relocated and renumbered to section 83A.

Amendment, relocation and renumbering of s 72 (Scheme annual report)

Clause 109 amends section 72 of the MERFP Act, which sets out the annual reporting responsibilities of the scheme manager. Amendments to this section require the scheme manager to include information in its annual report about the administration of the residual risks fund during the financial year. This reporting function will ensure transparency on the fund management of the residual risks fund. Other amendments are made in this clause to clarify the relevant components related to the residual risks fund.

Section 72 is also relocated and renumbered to section 83B.

Amendment of s 73 (Investigation of actuarial sustainability of scheme)

Clause 110 amends section 73 of the MERFP Act, which requires the scheme manager to investigate the actuarial sustainability of the financial assurance scheme within the prescribed period. For the investigation, the scheme manager must ask an appropriately qualified actuary to provide a report about the actuarial sustainability of the scheme. Amendments are made to this section to make it clear that the actuary's report required by this section only relates to the scheme fund, not the residual risks fund. The residual risks fund will also be subject to actuarial reviews, however these provisions will be located in a different section of the MERFP Act.

A minor amendment is also made to the definition of 'prescribed period' to clarify that the prescribed period for each investigation after the first investigation means three years after the date of the report for the immediately preceding investigation.

Relocation and renumbering of s 74 (Application for judicial review of particular decisions)

Clause 111 relocates section 74 of the MERFP Act to part 3B (Effect of decisions of scheme manager) and renumbers it to section 76F accordingly.

Amendment, relocation and renumbering of s 75 (Decisions of scheme manager otherwise final)

Clause 112 amends, relocates and renumbers section 75 of the MERFP Act. Section 75 is amended only to update the reference to previous section 74, which is to be renumbered to section 76F. This section will also be relocated to new part 3B (Effect of decisions of scheme manager) and renumbered as section 76G accordingly.

Amendment, relocation and renumbering of s 76 (No stay of decisions)

Clause 113 amends, relocates and renumbers section 76 of the MERFP Act. This section is only amended in order to update the reference to previous section 74, which is to be renumbered to section 76F. This section will also be relocated to new part 3B (Effect of decisions of scheme manager) and renumbered as section 76H accordingly.

Insertion of new pt 3A and pt 3B, hdg

Clause 114 inserts new part 3A into the MERFP Act to allow for provisions that govern the administration of the residual risks fund. This clause also inserts new part 3B into the Act to collate provisions that relate to the existing scheme fund and the new residual risks fund in one place.

Part 3A Administration of residual risks fund

Section 76A Application of subdivision

New section 76A specifies that this subdivision applies if the chief executive (resources) incurs, or might reasonably incur, costs and expenses to carry out residual risk activities for the State.

Section 76B Requesting entity may ask for payment from residual risks fund

New section 76B allows the chief executive (resources) to ask the scheme manager for a payment from the residual risks fund to cover costs and expenses associated with managing residual risks. The chief executive (resources) is the chief executive of the department administering one of the following resource Acts: *Mineral Resources Act 1989, Petroleum and Gas (Production and Safety) Act 2004, Greenhouse Gas Storage Act 2009* and *Geothermal Energy Act 2010.*

This section makes it clear that the request must be made in writing, state the details of the costs and expenses and include any other information prescribed by regulation. The purpose of this section is to allow the relevant chief executive to recoup the costs and expenses incurred when carrying out activities to manage residual risks (e.g. management and remediation activities).

Section 76C Decisions of scheme manager

New section 76C states that the scheme manager must decide to authorise, part-authorise or not authorise the payments requested by the chief executive (resources) from the residual risks fund. The scheme manager is empowered to authorise the requested payment unless the payment would adversely affect the financial viability of the residual risks fund. When fulfilling the payment request of the chief executive (resources), the scheme manager may choose to make the payment in full, or to pay only a part of the costs and expenses requested if the whole payment would adversely affect the viability of the fund.

When deciding whether to pay the requested amount, the scheme manager must have regard to any guidelines created under new section 76D.

If the scheme manager decides to pay the full, or part, amount requested, the decided amount must be paid.

Section 76D Guidelines

New section 76D provides the power for the scheme manager to make guidelines about the administration of the residual risks fund. Should the scheme manager create a guideline under this section, the scheme manager also has the power to amend or replace the guideline in the future. Any guidelines made under this section are considered a statutory instrument under the *Statutory Instruments Act 1992.*

Section 76E Investigation of actuarial sustainability of residual risks fund

New section 76E requires the scheme manager to investigate the actuarial sustainability of the residual risks fund within the prescribed period. For the investigation, the scheme manager must ask an appropriately qualified actuary to provide a report about the actuarial sustainability of the fund. This section allows the scheme manager to ask the chief executive administering the EP Act and the chief executive administering the resource legislation for information that may be relevant to the actuary's report, and if requested, the chief executives must provide the information requested. The purpose of the actuary's report is to determine whether, in the actuary's opinion, the money in the residual risks fund is adequate to meet the State's costs to carry out residual risk activities. The report will also include any changes the actuary recommends to ensure that the money in the residual risks fund remains adequate to meet the State's costs to carry out residual risk activities.

Once the scheme manager completes the investigation, the scheme manager must give the actuary's report to the Minister responsible for the MERFP Act. This will ensure

the relevant Minister is kept up to date on the performance of the residual risks fund and whether it is achieving its intent. This section also makes it clear that it does not limit the scheme manager's ability to inquire about other matters related to the administration of the residual risks funds.

Amendment of s 79 (Definitions for part)

Clause 115 amends section 79 of the MERFP Act to modify the definition of 'confidential information' to ensure that the confidentiality provisions extend to the new residual risks fund. This is to maintain consistency with how information is handled by the scheme manager.

Amendment of s 80 (Duty of confidentiality)

Clause 116 inserts a reference to new section 76E to ensure that the confidentiality provisions extend to an actuary asked to give the scheme manager a report on the new residual risks fund.

Amendment of s sch 1 (Dictionary)

Clause 117 amends the dictionary in schedule 1 of the MERFP Act to clarify terms associated with the new residual risks fund.

Amendments to this schedule include:

- inserting a definition for 'chief executive (common provisions)' which is the same as the pre-amended definition for 'chief executive (resources)' – all references to 'chief executive (resources)' in the pre-amended Act are replaced with 'chief executive (common provisions)' to better reflect the intent;
- replacing the definition for 'chief executive (resources)' so that the definition is relevant to the requesting entity for the residual risks fund; and
- omitting the term 'scheme manager guidelines' and replacing it with the term 'scheme guidelines' to make it clear that a reference to this guideline is only related to guidelines created about the scheme fund.

Part 4 Other amendments

Legislation amended

Clause 118 states which legislation is amended by schedule 1. Schedule 1 contains minor and consequential amendments to a number of pieces of legislation.

Many of these amendments update cross-references.

A number of provisions in the EP Act that make reference to a proposed PRCP that 'accompanies' an environmental authority application are amended to instead refer to a proposed PRCP 'for' an application. This reflects that the Bill makes amendments so that a site-specific application relating to a mining lease may not need to be accompanied by a proposed PRCP, and enables the proposed PRCP to be submitted at a later stage in the application process.

The definition of 'load' in section 77 of the EP Act is corrected by replacing the reference to 'volume' with 'mass'. The amount of dissolved inorganic nitrogen and suspended sediment that enter the waters from each river basin in the Great Barrier Reef catchment is expressed as tonnes per year in the water quality objectives set by the Environmental Protection (Water and Wetland Biodiversity) Policy 2019. Tonnes are more commonly understood as a reference to mass, rather than volume.

Section 41AA(6) of the Environmental Protection Regulation 2019 and section 11(6) of the Environmental Protection (Water and Wetland Biodiversity) Policy 2019 are omitted to reflect the insertion of the definition of 'Great Barrier Reef catchment waters' into section 112 of the EP Act through this Bill. As the term is now defined in the EP Act, it is not necessary for it to be defined in the Environmental Protection (Water and Wetland Biodiversity) Policy 2019.

Section 35 of the Environmental Protection Regulation 2019 is amended to insert 'or Great Barrier Reef catchment waters' after 'waters of the Great Barrier Reef'. This is to make it clear that the impacts of fine sediment or dissolved inorganic nitrogen must be considered where they are released into waters regardless of whether those waters are within the Great Barrier Reef catchment or adjacent coastal waters of the Great Barrier Reef.