

ENVIRONMENTAL PROTECTION AMENDMENT BILL 2020

EXPLANATORY MEMORANDUM

Introduction

The Environmental Protection Amendment Bill 2020 amends the *Environmental Protection Act 1986* (EP Act) to improve and update it by streamlining and improving regulatory processes for the protection of the environment in Western Australia. The Bill also makes minor, consequential amendments to other Acts.

The Bill will be supported by amendments to the *Environmental Protection Regulations 1987*, *Environmental Protection (Clearing of Native Vegetation) Regulations 2004* and the making of new regulations necessary to implement the reforms.

The main areas of reform in the Bill are:

- Improving regulatory processes under Part IV to streamline the administrative efficiency of the environmental impact assessment process, and reducing duplication of assessments and approvals.
- Introducing cost recovery provisions relating to Part IV.
- Clarification of provisions dealing with strategic assessments using terminology consistent with that used in other jurisdictions. These amendments will provide clarity and align the Environmental Protection Authority's (EPA) ability to conduct strategic assessments with similar processes in other jurisdictions.
- Amending Part V Division 2 to ensure the clearing provisions are efficient, targeted, flexible and transparent while ensuring the protection of native vegetation with important environmental values.
- Amending Part V Division 3 to improve the efficiency of regulation of emissions and discharges.
- Modernising and improving defences, investigation and enforcement powers, and providing for enhanced modified penalties.
- Introducing a new Part to provide for environmental protection covenants to which the Chief Executive Officer (CEO) may enter under conditions made for Part IV (proposals) and Part V Division 2 (clearing permits).
- Providing a new Part VIIB which enables regulations to be made for the development of environmental monitoring programs to address cumulative environmental impacts in particular areas or from certain industries and to recover the costs of monitoring.
- Facilitating and streamlining the implementation of bilateral assessment and approval agreements under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*, including fees for cost recovery.
- Amending appeal provisions to improve consistency.

- Establishing consistent transparency and publication requirements throughout the EP Act, providing a head power for a system for the accreditation of environmental practitioners, and increasing penalties for certain environmental offences.

Part 1 – Preliminary

Clause 1: Short title

This clause provides the short title of the Bill.

Clause 2: Commencement

The clause provides for the commencement of the Bill and specifies when the *Environmental Protection Amendment Act 2020* will come into operation. Different parts of the Act may come into operation on different dates set by Royal Assent or fixed by proclamation.

Some of the proposed amendments will commence once the regulations required to implement particular reforms have been developed.

Part 2 – Environmental Protection Act 1986 amended

Clause 3: Act amended

This clause specifies that the amendments relate to the EP Act.

Amendments to Part I of the EP Act – Preliminary

Clause 4: Section 3 amended

This clause inserts new defined terms used in the Bill, amends existing defined terms, and deletes defined terms that are no longer required.

Many of the changes are a result of amendments to processes under Part IV; the reform of regulation of emissions and discharges in Part V Division 3 of the Act; and the introduction of new Parts into the EP Act.

Clause 4(4) defines the term “Ministerial Statement” to refer to the implementation agreement or decision made under Part IV, to accord with common terminology.

It also introduces a new section 3(1B) into the EP Act which states that the effect of a proposal on the environment includes its cumulative impacts. While this has been the understanding of the current provisions, this is now clarified.

The term “cumulative impacts” relies on its ordinary meaning, which may change over time in a similar manner to the term “significant” used in the EP Act.

Clause 5 Section 3A amended

The definition of “threshold amount” in section 3A, for the purposes of the definitions of material and serious environmental harm, is increased from \$20,000 to \$100,000.

This is based on stakeholder feedback that the cost of dealing with incidents on remote sites is largely related to the cost of getting equipment to site and does not reflect the environmental significance of the harm.

An offence of material harm can be established regardless of the threshold amount, where it is proved that the harm is neither trivial nor negligible (material environmental harm) or is irreversible, of a high impact, on a wide scale, is significant or in an area of high conservation value or special significance (serious environmental harm).

Amendments to Part II of the EP Act – Environmental Protection Authority

Clause 6: Section 7 amended

This clause amends section 7 in order to modernise publication requirements and to introduce gender neutral language when referring to Environmental Protection Authority (EPA) members, Chair (previously Chairman) and Deputy Chair (previously Deputy Chairman).

The practice of advertising certain decisions or information can continue if this is desired.

Clause 7: Section 8 replaced

This clause amends section 8 to use the terms Chair instead of Chairman and *Deputy Chair instead of Deputy Chairman*.

Clause 8 Section 11 replaced

Subsections (3) and (6) of section 11 allow for meetings of the EPA to be convened and attended remotely including by teleconferencing, videoconferencing, virtual meeting software or any other method which allows for instantaneous communication.

Section 11 has also been amended to make minor drafting improvements and incorporate gender neutral language.

Clause 9 Section 14 amended

This clause deletes section 14(2) and replaces it with a requirement to publish minutes rather than make them available for inspection. Regulations will prescribe the manner of publication.

Clause 10 Section 14A inserted

This clause inserts a new section 14A, which allows for the EPA to make decisions out of session without a meeting being held. The proposed decision must be sent by notice from the Chair or Deputy Chair to each member, and the members vote on the matter by written notice. Records must be kept of all decisions made under this section.

Clause 11 Section 16 amended

This clause deletes section 16(aa), which currently refers to the EPA's functions in facilitating the implementation of bilateral agreements. This is now dealt with in the new Part VIIIA.

Clause 12 Section 17 amended

This clause deletes section 17(4), which allows the EPA to consider matters relating to bilateral agreements in the exercise of its functions. This is now dealt with in the new Part VIIIA.

Amendments to Part III of the EP Act – Environmental Protection Policies

Clause 13 Section 26 amended

Section 26(1)(d), which sets out the publication requirements in respect of a draft environmental protection policy, has been deleted and replaced with a new subsection. The new section 26(1)(d) is now less prescriptive as it is intended to deal with publication requirements in regulations.

Clause 14 Section 32 amended

This clause makes consequential changes to section 32 as a result of the removal of section 26(1)(d) by clause 13.

Amendments to Part IV of the EP Act – Environmental Impact Assessment

Division 1 – Referral and assessment of proposals

Clause 15 Sections 37B to 38A replaced

This clause deletes section 37B, 38 and 38A and replaces them with new sections 37B, 38, 38A, 38B, 38C, 38D, 38E, 38F, 38G, 38I.

Divisions 1 and 2 of Part IV have been re-drafted and reformatted to address stakeholder submissions that the current Division is unclear and difficult to follow.

In addition to drafting improvements to achieve greater clarity, the Bill makes the following substantial amendments to the current provisions.

The new section 38B(2) provides additional exceptions to the requirement that a proposal cannot be referred more than once, where the referral or Ministerial Statement has been withdrawn. This allows a withdrawn referral or approved proposal with a withdrawn Ministerial statement to be referred again if the proponent wishes to do so.

The new section 38C allows a proponent to apply to the EPA to amend a referred proposal before a decision is made on whether it will be assessed. There is currently no explicit power for a referral to be amended. This causes problems where a referral does not accurately capture the proposal (in the case of third party referral for example), or where the proponent has materially changed its plans for the proposal. The EPA has a discretion on whether to accept the request.

A new section 38D allows a proponent to notify the EPA that a referred proposal is not proceeding, in which case the referral is taken to have been withdrawn.

The new section 38E amends the terminology for strategic proposals and includes the term 'strategic assessment' to align with the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*. Section 38E(10) clarifies that the proponent of the strategic proposal may not be the same as the proponent or proponents of derived proposals.

The new section 38F amends the "stop-the-clock" provision currently found in section 38A(2) where the EPA requests further information in order to decide whether to assess a referred proposal. The new provision clarifies that the 28-day period for the EPA to make a decision is only paused during the time specified in the notice. It does not continue indefinitely if no response is received, nor restart each time a notice is given.

The new section 38G(1)(b)(iii) gives the EPA the power to make its own determination as to which decision-making authorities are relevant to a proposal and must therefore be given a notice of the decision to assess. This streamlines notification requirements so that the EPA is not required to notify every decision-maker with a decision making role in relation to the proposal unless the decision is relevant to the proposal's environmental impact.

The new section 38G(2) provides that the EPA does not have to make a decision on whether to assess a proposal where the referral has been withdrawn.

The new section 38G(4) clarifies that the EPA may take into account other statutory decision-making processes in determining whether a proposal should be assessed.

The new section 38I clarifies that the responsibility for a proposal can be transferred to a new proponent, both during assessment and after a Ministerial Statement has been published. During assessment, the decision is for the EPA. After the Ministerial Statement has been published, the decision is made by the Minister.

Clause 16 Section 39 replaced

This clause deletes section 39 and inserts a new section 39. There is no longer a requirement to record the level of assessment determined, as this term is not used in the EP Act, and the EPA has moved away from prescriptive levels of assessment in favour of greater flexibility in assessment approaches.

The ability to request that information not be kept on the public record has been removed as confidentiality claims will now be dealt with in regulations.

Clause 17 Sections 39A and 39B deleted

This clause deletes section 39A and 39B. These provisions are now in new sections 38G and 38E, respectively.

Clause 18 Section 40 amended

This clause deletes and replaces section 40(4) and (5). The ability to request that information is not published has been removed as confidentiality claims will be dealt with in regulations.

Clause 19 Section 40AA inserted

This clause provides for the assessment of significant amendments. The current provisions of the EP Act define a proposal to include an amendment to a proposal, and therefore amendments could be referred as significant proposals under section 38.

The current Act is not clear about the process for referral and assessment of amendments and uses undefined terms such as “revised proposal” and “further proposal” in other sections which are unclear.

A new defined term is created in section 3(1) for a “significant amendment” and new section 40AA provides clarity about the way in which this is assessed and its impact on an existing approved proposal.

Clause 20 Section 40A amended

This clause inserts a new paragraph (aa) into section 40A(1) that allows the EPA to terminate the assessment of a proposal where the proponent gives notice that it does not wish to proceed.

Clause 21 Section 40B replaced

This clause deletes section 40B and replaces it with a new section with updated cross-references.

Clause 22 Section 41 amended

This clause makes amendments to section 41 to make drafting improvements and update cross-references.

Clause 23 Section 41A amended

This clause removes the reference to “revised or further” proposals due to the change in terminology in other sections and updates cross-references.

Clause 24 Section 42 amended

This clause replaces the reference to “Chairman” in section 41(1)(b) with “Chair”.

Clause 25 Section 43 amended

A new section 43(3A) is inserted which provides that a Minister can direct the EPA to assess a proposal even where the EPA has decided not to assess the proposal and the Minister has dismissed an appeal against this decision. This clause also makes drafting improvements and updates cross-references.

Clause 26 Section 43A replaced

The existing test for approving a change to a proposal during assessment, “the Authority considers that the change is unlikely to significantly increase any impact that the proposal might have on the environment”, has been removed. There is no longer a reference to referring a revised proposal to the EPA where the test is not satisfied.

The new provision allows the EPA to approve the change and to consider whether the change is significant enough to justify the re-exercise of any of the powers under section 40.

Clause 27 Section 44 amended

This clause inserts a new section 44(2AA) which provides that the EPA may take into account other statutory decision-making processes that can mitigate the potential impacts of the proposal on the environment.

This clause also updates cross-references.

Division 2 – Implementation of proposals*Clause 28 Sections 45 to 45C replaced*

This clause deletes section 45, 45A, 45B and 45C and inserts new sections 44A, 45, 45A, 45B, 45C and 45D.

Part IV Division 2 has been redrafted to improve clarity, and to simplify and improve processes for making changes to approved proposals and their conditions.

The new section 44A contains a number of new definitions for the purpose of the Division.

The new section 45(2) provides that the Minister must determine which decision-making authorities have a role in terms of making major decisions for the proposal that may have significant effects on the environment (key decision-making authorities). The new section 45(4) requires the Minister to consult and attempt to agree with key decision-making authorities.

The new section 45(10) clarifies the effect of appeals against the EPA's report. An agreement cannot be reached during the 21 day period in which a person may lodge an appeal against the EPA's report or while an appeal is pending. If the outcome of the appeal is that the Minister remits the proposal for further assessment, no agreement may be reached until that further assessment is complete.

The existing section 45(6)(b), which deals with the effect of an appeal against implementation conditions, has been removed. An amendment to section 110 clarifies that the Minister gives effect to a successful appeal against conditions by publishing an amended Ministerial Statement. The matter does not come back for agreement under section 45.

A new section 45A has been inserted, which provides for non-exclusive types of conditions that may be imposed under section 45. This includes a condition requiring substantial commencement within a specified period, which is linked to the power to withdraw a Ministerial Statement in section 47A.

The new section 45C creates a process to amend an approved proposal or its conditions.

The Minister may make the requested change without assessment if satisfied that the change is not a significant amendment. A significant amendment means one that is likely, if implemented, to have a significant effect of the environment.

The Minister may also change a proposal or conditions without a request where the change is of a minor nature, and is necessary to correct an error or standardise implementation conditions.

Where the Minister refuses to approve an amendment under section 45C, the proponent may refer the amendment as a significant amendment under section 38. The Minister may also make a request for the EPA to inquire into and report on a change to conditions under section 46.

The new section 45D enables the Minister to divide or consolidate Ministerial Statements for approved proposals under section 45C.

Clause 29 Section 46 amended

This clause inserts a new section 46(8A), which provides that the Minister must only consult and attempt to agree on amended conditions if the amendment might affect the decision-making functions of that decision-making authority.

This clause also updates defined terms, improves drafting and updates cross-references.

Clause 30 Section 46A amended

This clause updates cross-references and gives effect to other provisions.

Clause 31 Sections 46B to 48 replaced

This clause deletes sections 46B, 46C, 47 and 48 and replaces them with new sections 47, 47A and 48. The substantial changes from existing provisions are set out below.

A new section 47(2) allows the Ministerial Statement to be withdrawn under section 47A.

The new section 47A provides that a Ministerial Statement has effect unless it is withdrawn or is taken to be withdrawn. A Ministerial Statement may be withdrawn by the Minister where the CEO gives the Minister notice that a commencement condition has not been complied with.

A Ministerial Statement may also be surrendered by the proponent where the proposal is fully implemented or its impacts can be adequately managed by some other form of regulatory control under a written law.

A new section 47A(7) also provides for Ministerial Statements to be published with fixed terms rather than continuing indefinitely.

A new section 48(7)(a)(ii) allows the Minister to issue a notice in relation to non-compliance which requires the implementation of a proposal to cease for up to 28 days, an increase over the current 24 hours.

Division 3 – Assessment of schemes

Clause 32 Part IV Division 2A inserted

This clause inserts a new section 48AA to provide for regulations prescribing fees and charges for referral, assessment and implementation of proposals under Divisions 1 or 2.

There is no power to impose fees on persons referring proposals or decision-making authorities that are required to refer proposals to the EPA. There is also no power to impose fees in relation to the assessment of schemes under Division 3.

Section 48AA(2) provides that fees and charges received must be used for the costs incurred by the Department in receiving and assessing proposals and monitoring their implementation. This will ensure the fees or charges are not a source of general government revenue.

Clause 33 Section 48A amended

This clause removes the references to decision-making authorities from section 48A.

Clause 34 Section 48BA amended

This clause inserts a new section 48BA. This new section allows the EPA to request further information in order to determine whether or not to assess a scheme, or determine that it is incapable of being made environmentally acceptable. A request for information stops the clock on the statutory timeframes for making decisions.

Clause 35 Section 48B amended

This clause changes “shall, subject to this section” in section 48B(1) to “must”.

It deletes section 48B(2) which requires a public record to be made available for public inspection at specified times and places as future prescribed publishing requirements are likely to be on the internet.

Clause 36 Section 48C amended

This clause deletes section 48C(4) and inserts a new 48C(3A) and (4). It also makes amendments to 48C(5) in line with the amended approach to publication across the Act.

Clause 37 Section 48D amended

This clause amends section 48D(1) to allow the EPA to make recommendations on whether or not the scheme should be implemented and not just the conditions that should be imposed.

This clause also removes the reference to “decision-making authority” from section 48D(3)(b)(iii).

Clause 38 Sections 48F and 48G deleted

This clause deletes sections 48F and 48G.

Clause 39 Sections 48EA, 48F and 48G inserted

This clause inserts new sections 48EA, 48F and 48G.

The new section 48EA inserts defined terms for the purposes of the Division.

The new sections 48F and 48G include drafting improvements that do not change the substantial effect of the current provisions.

Division 4 – Implementation of schemes

Clause 40 Section 48H amended

This clause amends section 48H(1) to incorporate the new defined term “implementation condition”.

Clause 41 Section 48J amended

This clause amends section 48J to incorporate the new defined terms “implementation issue” and “implementation conditions”.

Amendments to Part V of the EP Act – Environmental Regulation

Division 1 – Pollution and environmental harm offences

Clause 42 Section 51 deleted

The new Part V Division 3 removes the restriction that a licence can only be granted to an occupier of a premises. Requiring an occupier (who may not be the licence holder or person in control of an activity) to take reasonable and practicable measures to prevent or minimise all emissions (no matter how significant their impact) is not consistent with the risk-based licensing regime established in the new Part V Division 3.

Division 2 – Clearing of native vegetation

Clause 43 Section 51A amended

This clause inserts defined terms into section 51A for the purpose of the Division. These defined terms were previously in section 51D(1).

Clause 44 Sections 51B to 51D replaced

This clause deletes sections 51B, 51C and 51D and replaces them with new sections 51B, 51C, 51D and 51DA.

The new section 51B provides that, instead of environmentally sensitive areas being declared under a notice by the Minister, they are to be prescribed by regulations.

The new section 51C includes a new paragraph (d) which provides that clearing is not an offence where the clearing has been referred under section 51DA and is done after the person has received a notice from the CEO that a clearing permit is not required.

The new section 51D(3) includes a new paragraph (b) which provides that a clearing permit cannot authorise clearing on land subject to an environmental protection covenant.

The new section 51DA creates a referral system for clearing, similar to the process in Part IV.

Clearing cannot be referred under section 51DA if it is on land subject to an agreement to reserve, conservation covenant or environmental protection covenant.

The CEO may allow clearing to occur without a clearing permit where the proposed clearing meets the criteria set out in section 51DA(4). The CEO's decision must be published. If a decision is not made by the CEO within 21 days, the referrer may request that the application be dealt with as an application for a clearing permit.

An application may also be made directly without a referral.

Clause 45 Section 51E amended

This clause consequentially amends wording in section 51E to ensure consistency with equivalent sections of the EP Act, as amended.

This amendment enables the CEO by written notice to require an applicant for a clearing permit to provide additional information to determine an application within a specified period of time. It also provides the CEO must decline to deal with any application where the applicant does not comply with the requirements of the notice.

The provisions regarding seeking and considering comments have been redrafted and a requirement to publish the application and accompanying information has been inserted.

Clause 46 Section 51F replaced

This amendment clarifies the circumstances in which a clearing application is related to a proposal to ensure that the CEO does not make a clearing decision that would lead to the implementation of a proposal while it is under assessment by the EPA or in contradiction to the agreement reached by the Minister.

Activities such as geotechnical investigative works or hydrogeological investigations or other activities that are necessary to define a proposal or inform the assessment of a proposal are not within the scope of this section and clearing permits may be granted for these purposes.

Clause 47 Section 51H amended

This clause inserts “directly or indirectly” into section 51H(1) before offsetting. This clarifies that indirect offsets such as managing threats to vegetation by eradicating feral animals may be valid offsets.

Clause 48 Section 51I amended

Clause 48(1) makes drafting improvements to section 51I(2)(b) and (c). It inserts new paragraphs (ca) and (cb) into section 51I(2), which allow conditions to be imposed on a clearing permit that require a permit holder to give an environmental undertaking or arrange for a specified person to give an environmental protection covenant.

Clause 48(2) provides that, if a condition of a clearing permit requires a permit holder to enter into an environmental undertaking, the condition can require that the permit holder not cause or allow the clearing until the environmental undertaking is given.

Clause 48(3) introduces new defined terms for the purposes of section 51I.

Clause 49 Section 51J amended

This clause replaces section 51J with a new section 51J which has been amended to reflect updated terminology and cross-references.

Clause 50 Section 51K amended

The EP Act does not currently allow for the amendment of an existing purpose permit to add a new purpose or amend the existing purpose. Clause 49(1) inserts a new paragraph (ca) into section 51K(1), which allows for an application to be made to amend the purpose of a clearing permit. Clause 49(2) makes a minor formatting change to section 51K(2).

Clause 51 Sections 51KA and 51KB inserted

This clause inserts new sections 51KA and 51KB.

The new section 51KA sets out the process for making and determining an application to amend a clearing permit. The process is largely modelled on section 51E (application for a clearing permit). The application must be in the approved manner and form, accompanied by the prescribed fee and contain any required information. The CEO may request further information within a specified time, and may decline to deal with the application if the requirements of the section are not complied with or requested information is not provided. The CEO must approve or refuse the amendment and must publish notice of the decision.

The new section 51KB prevents an amendment to a clearing permit being made during the period in which a proposal is under assessment under Part IV if the amendment is related to that proposal. This is consistent to section 51F which applies to the grant of clearing permits and was previously in section 51M(8).

Clause 52 Section 51L amended

This clause makes drafting improvements and removes paragraph (d) of section 51L, which refers to the surrender of a clearing permit. Surrender of clearing permits will now be dealt with in the new section 51MA.

Clause 53 Section 51M amended

This clause makes consequential amendments to section 51M, which sets out the procedure for amending, revoking or suspending a clearing permit. This section has been amended to be consistent with section 51E (clearing permit applications), including expanding publishing requirements and inserting a power for the CEO to require further information to determine an application.

A new section 51M(8) is inserted which provides that the processes set out in 51M(1) to (7) do not apply to anything done by the CEO under section 110(1) of the EP Act to give effect to a decision of the Minister on appeal.

Clause 54 Section 51MA inserted

This clause inserts a new section 51MA to address the current section 51M under which the voluntary surrender of a clearing permit has the same administrative requirements as revocation, including the requirement for the CEO to give 28 days' notice before the surrender can be effected.

The new section 51MA allows a permit holder to apply to surrender a permit and gives the CEO the power to accept the application for surrender or refuse the application if the CEO is not satisfied that the conditions of the permit have been complied with. If the CEO accepts the surrender, the clearing permit ceases to be in force when written notice is given by the CEO to the holder of the clearing permit. The application and notice of outcome must be published.

Clause 55 Section 51O amended

This clause deletes the definition of planning instrument, which is now defined in section 3.

This clause also provides that the CEO shall have regard to a development approval in considering a clearing matter. The term development approval is defined in section 3 of the EP Act.

Clause 56 Section 51P amended

This amendment inserts a new section 51P(4) which clarifies the relationship between clearing permit conditions, policy and implementation agreements and decisions under Part IV.

Clause 57 Section 51Q replaced

This clause deletes section 51Q and replaces it with a new section 51Q to expand the types of material and information that are required to be kept on the public record.

Clause 58 Section 51R amended

This clause deleted section 51R(1) and (2). These provisions have been moved to a new section 116B which applies to all offences under the EP Act rather than being limited to offences under Part V Division 2.

Clause 59 Section 51S amended

This clause deletes section 51S – clearing injunctions. The provisions have now been moved to a new section 99ZC, which applies to all offences under the EP Act.

Division 3 - Licences

Clause 60 Part V Division 3 replaced

This clause replaces Part V Division 3 to reform the regulation of emissions and discharges under the EP Act and inserts new sections as follows.

Section 52 sets out the terms used in the Division.

Section 53 sets out the purpose of a licence and provides that a licence may authorise and deal with either the carrying out of controlled work or a prescribed activity or both.

A licence may also be granted to carry out an activity that would be a prescribed activity if it met the prescribed threshold.

This provision also makes it clear that the carrying out of prescribed activities may be restricted to premises as defined in the licence. A licence authorising or dealing with the carrying out of work or activity may prohibit, authorise, control or regulate any act, omission, emission or environmental impact related to the work or activity to such extent and in such manner as the CEO considers necessary for the purposes of the EP Act.

Sections 53A and 53B respectively provide that it is an offence for a person to carry out or cause or allow controlled work or a prescribed activity to be carried out unless authorised by a licence. Both offences apply to the licence holder as well as any person directly or indirectly engaged, authorised or permitted by the licence holder to carry out the controlled work or prescribed activity.

Sections 53C and 53D set out the requirements for applications for a licence or for amendment, transfer or surrender of a licence. Applications must be made in the approved manner and be accompanied by information specified on an approved application form. The CEO may require an applicant to provide additional information. The CEO must decline to deal with any application where the application does not meet the requirements of section 53C or the applicant does not provide requested information.

Section 53E sets out the circumstances and manner in which the CEO must notify and give certain persons an opportunity to comment on applications, including expanded publication requirements.

Section 54 provides that the CEO may either grant or refuse to grant a licence and sets out matters the CEO must have regard to when deciding whether to grant a licence including any relevant prescribed standards; any relevant development approval or planning instrument; and whether the applicant would have, and be capable of exercising, substantial control over the carrying out of the work or activity. The outcome of the application must be published.

Section 55A provides that a licence continues in force for the period specified in the licence unless it is surrendered or revoked.

Section 55 provides a power for the amendment of a licence with substantially the same effect as current section 59. The processes and decision-making requirements are consistent with those for an application for a new licence in section 54. In addition, the CEO must have regard to whether the conditions of any relevant licence in relation to controlled works have been complied with.

Section 56 provides for the revocation or suspension of a licence consistent with the scope of current section 59A. Section 56(2) inserts a new power to partially suspend a licence. Additional grounds for revocation or suspension have been inserted where the holder of the licence has not paid the prescribed fee; any required development approval or planning instrument is no longer in force; or the CEO considers that the licence holder no longer has, or is no longer capable of exercising, substantial control over the carrying out of the work or activity.

Section 57 sets out the procedural requirements for a CEO-initiated amendment, revocation and suspensions including providing written notice of the proposed action and giving the licence holder an opportunity to make written representations.

Section 58 provides for notice and publication of any amendment, revocation or suspension.

Section 58A provides that the notice requirements do not apply to anything done by the CEO to give effect to a decision of the Minister on appeal.

Section 58B provides for the effect of a suspension on a licence. A suspended licence may be revoked or transferred.

Section 59 provides for the decision-making requirements for the transfer of a licence. These mirror the processes and publication requirements in section 54 (grant of a licence) and 55 (amendment of a licence).

Section 60 provides for the decision-making requirements for the surrender of a licence. These mirror the processes and publication requirements in sections 54, 55 and 59.

Section 60A is broadly equivalent to the amended section 51F and clarifies the extent to which the CEO is constrained from making a decision on an application where the application is for a purpose that is related to a proposal that has been referred to the EPA under section 38 of the EP Act.

Section 60B includes the provisions currently in section 60. It requires that the grant, amendment or transfer of a licence must be consistent with approved environmental protection policies.

Section 61 deals with the imposition of licence conditions. As well as including the current provisions found in section 62, it provides that additional types of conditions may be prescribed by regulations, and that regulations may prescribe conditions to which every licence, or specified types of licence are subject. Subsections (6) and (7) clarify that a condition may require a licence holder to comply with a requirement to pay waste levy or an environmental monitoring levy under Part VIIB.

Section 61A provides a non-exclusive list of the kinds of conditions that may be imposed on a licence. This section is substantially the same as the current section 62A.

Section 62 provides that it is an offence to contravene a condition of a licence.

Section 63 is a new provision, which provides that a person, other than the holder of a licence who carries out work or activities constituting, or relating to, controlled work or a prescribed activity authorised or dealt with by a licence, commits an offence if they contravene a condition of the licence. This section also deems the licence holder to have committed an offence in these circumstances.

A licence holder prosecuted in relation to the actions of an employee or contractor may rely on the defence in section 74C by providing that they had taken reasonable precautions and exercised due diligence to prevent the offence. A contractor who had no knowledge of the licence requirements may rely on the new defence in section 74D.

Section 64 provides for a range of information to be kept on the public record and allows further information or documents to be prescribed as being required to be kept on the public record.

Division 4 – Notices, orders and directions

Clause 61 Section 64A replaced

This clause replaces section 64A with a new section 64A which updates the terminology for publishing requirements for notices, orders and directions.

Clause 62 Section 66 amended

This clause deletes the definitions of “Registrar of Deeds and Transfers” and “Registrar of Titles” as these are now defined in section 3.

Clause 63 Section 68A amended

Section 68A(2) has been amended to allow a closure notice to be issued in relation to a premises where the licence has been suspended (in addition to cases where the licence has expired or been revoked).

Section 68A(7)(b) has been amended to clarify that the power to impose requirements on a closure notice is no more limited than the power to impose conditions on a licence.

New subsections (10A), (10B) and (10C) provide for the effect of a suspension being lifted where a closure notice has been given.

This clause also makes drafting amendments and consequential amendments.

Clause 64 Section 70 amended

This clause amends the definition of “unlawful clearing” to include contravention of an environmental protection covenant. It also amends the definitions of “watercourse” and “wetland” to be consistent with the definitions in Schedule 5 of the EP Act.

An ability to impose monitoring, record-keeping and reporting requirements as part of a vegetation conservation notice has been inserted into section 70(4A)(b).

This clause also makes drafting amendments and consequential amendments.

Division 5 – Defences*Clause 65 Part V Division 5 heading replaced*

This clause replaces the heading of Part V Division 5 with “Division 5 – Defences”.

Clause 66 Sections 74 and 74A replaced

This clause deletes and replaces sections 74 and 74A.

The defence provided by section 74 in relation to emergencies and accidents has been extended to offences of unlawful clearing under section 51C. This will allow clearing without a permit for the purpose of preventing danger to human life or health or irreversible damage to a significant proportion of the environment, or by accident otherwise than by negligence. The current section 74(1a) has been moved into a new section 74C and the current section 74(2) is now found in section 74E.

Section 74 has also been amended to make drafting improvements.

The new section 74A includes a new subsection (2) which provides that a licence does not authorise an emission for the purpose of the defence unless the emission is specified in the licence as an authorised emission.

Clause 67 Sections 74C to 74E inserted

This clause inserts new sections 74C, 74D and 74E.

Section 74C replaces existing section 74(1a) and extends the defence to other specified offences. It provides a defence if the person charged with the offence proves that they took reasonable precautions and exercised due diligence to prevent commission of the offence. Notification requirements apply.

Section 74D introduces a new defence for the offence of contravening licence conditions if a defendant, who is not the licence holder, proves that they did not know, and could not reasonably be expected to know, that the work or activity they carried out constituted or was related to controlled work or a licensed activity.

Section 74E replaces existing section 74(2).

Clause 68 Part V Division 6 heading inserted

This clause inserts the Part V Division 6 heading 'Division 6 – General' before section 75.

Clause 69 Section 86E amended

This clause makes consequential changes to cross-references and allows the recovery of costs where a person does not take an action required by a vegetation conservation notice and the CEO causes the action to be taken under section 70(10).

Clause 70 Section 86G amended

This clause amends section 86G to make consequential amendments to cross-references.

New Part VB of the EP Act – Environmental Protection Covenants

Clause 71 Part VB inserted

This clause inserts a new Part which enables the CEO to enter into an environmental protection covenant and inserts the following sections.

Section 86H defines terms used in this Part.

Section 86I provides that the CEO may enter into an environmental protection covenant with the owner of the land as a condition of a clearing permit or Ministerial Statement. The consent of every owner and occupier of the land is required.

Section 86J sets out the form and content of, and requirements for preparing, an environmental protection covenant. The terms must be agreed between the CEO and the owner and may include positive and negative obligations. The covenant may be for a specified term or irrevocable. The costs of preparing and registering the covenant are borne by the person required to enter into the covenant.

Section 86K provides for registration of a memorial of the environmental protection covenant on the title of the land.

Section 86L provides that an environmental protection covenant is binding on each owner and occupier of the land at the time the covenant is given and on successive owners and occupiers while a memorial of the environmental protection covenant remains registered.

Sections 86M and 86N set out how a covenant may be amended. The new section 101B provides an appeal against a decision by the CEO to refuse an application for an amendment.

Section 86O makes it an offence to contravene an environmental protection covenant. This is a Tier 2 offence with a maximum penalty of \$62,500 for individuals and \$125,000 for bodies corporate.

Section 86P requires that owners or occupiers who intend to pass their interest in land the subject of a covenant to another person must first notify that person about the covenant and its binding effect. The CEO must also be notified of the transfer of interest and the details of the new owner or occupier. A failure to comply with this provision is a Tier 2 offence with a maximum penalty of \$62,500 for individuals and \$125,000 for bodies corporate.

Section 86Q provides the circumstances and manner in which a revocable covenant may be discharged. The CEO must only discharge a revocable covenant if the CEO is of the opinion that the covenant is no longer necessary or there is other just cause

for discharging the covenant. There is an appeal available in relation to a refusal by the CEO to discharge a covenant under this section.

Section 86R provides for the cancellation of the memorial on the title where a covenant is discharged.

Amendments to Part VI of the EP Act – Enforcement

Clause 72 Section 89 amended

This amendment amends section 89 to extend an inspector's powers to include entry for the purpose of:

- the implementation or operation of an environmental monitoring programme;
- determining whether there has been compliance with or contravention of an environmental protection covenant; and
- determining whether an offence has been, is being or is likely to be committed under the EP Act.

The amendments also include consequential drafting changes.

Clause 73 Section 90 replaced

This clause deletes section 90 and replaces it with new sections 89A and 90.

Section 89 currently gives inspectors powers to enter premises for specified purposes, including determining whether there has been compliance with, or contravention of, any requirement under the EP Act.

The new section 89A gives inspectors the power to use such assistance and reasonable force in exercising their powers under section 89. The persons who enter with the inspector to provide assistance may also use this power. The use of reasonable force is limited to use against property, and does not include use of force against persons. Where the use of reasonable force is likely to result in significant damage, the prior consent of the CEO is required.

The new section 90 amends the current section in relation to powers of inspectors to obtain information by:

- extending the power to require persons to produce information to include breaches that do not involve an emission;
- enabling a person to be compelled to attend a particular time and place for the purpose of answering questions under section 90(1b)(b); and
- allowing electronic recording of statements.

Clause 74 Section 92F deleted

This section is replaced by section 90A.

Clause 75 Section 92H amended

This amendment extends a person's right to compensation for loss or damage to include loss or damage caused by the power of entry conferred on an inspector under section 89(1).

Clause 76 Section 99 amended

This amendment deletes section 99(4) and removes the power of the CEO to recover costs incurred under section 99(3) in relation to providing assistance with stopping audible alarms.

Amendments to Part VIA of the EP Act – Legal Proceedings and Penalties

Clause 77 Part VIA Division 1 heading replaced

This clause changes the heading of Part VIA Division 1 to "Prescribed offences and modified penalties" as consequence of other amendments.

Clause 78 Section 99AA inserted

This clause inserts a new section 99AA, which specifies all Tier 2 and Tier 1 offences which do not include an element of criminal negligence or intentional conduct are eligible to be dealt with via a modified penalty.

Clause 79 Section 99A amended

This clause inserts a new section 99A(1A) to clarify the circumstances and matters to which the CEO must have regard in deciding whether an offence can be dealt with through a modified penalty.

This clause also amends section 99A to make consequential changes following from the amendment to section 90AA.

Clause 80 Section 99E amended

This clause amends section 99E(3) to require the CEO to publish a notice of a prescribed penalty and such other particulars as are prescribed.

Clause 81 Section 99J amended

This clause extends the timeframe for serving an infringement from 35 days to 12 months after the day on which the alleged offence is believed to have been committed.

Clause 82 Section 99Z amended

Section 99Z allows a court to make an order for a convicted offender to pay an additional penalty in respect of the amount of monetary benefits gained by reason of the offences. The definition of monetary benefits has been amended to clarify that it extends to additional profits gained by reason of the offence.

Clause 83 Part VIA Division 5 inserted

This clause inserts a new section 99ZC which extends the provisions regarding statutory injunctions in the previous section 51S, which were only available in relation to clearing offences, to a range of offences under the Act.

Amendments to Part VII of the EP Act – Appeals*Clause 84 Section 100 amended*

This clause amends section 100(3a) to extend the period of time in which an appeal can be lodged from 14 to 21 days for the following types of appeals:

- appeals against a decision of the EPA not to assess a proposal; and
- appeals against the contents of, or recommendations in, a report by the EPA in relation to a proposal or scheme.

The appeal period for all other appeals remains at 14 days.

This clause also makes minor amendments to section 100 to update terminology and cross-references to other sections.

Clause 85 Section 101 amended

The amended section 101(3)(c) and (d) provides that the proponent may continue to implement the proposal in accordance with the original conditions while an appeal on the amended conditions is being determined.

This clause also makes minor amendments to the drafting and cross-references.

Clause 86 Section 102 replaced

This clause deletes section 102 and replaces it with a new section 101B and section 102.

The new section 101B provides an appeal right to the Minister for a person who is aggrieved by a refusal of the CEO to amend or discharge an environmental protection covenant.

The new section 102 includes drafting improvements and consequential amendments in relation to appeals for Part V Division 3.

Clause 87 Section 105 replaced

This clause deletes and replaces section 105. The new section 105 contain minor drafting improvements and consequential changes to cross-references.

Clause 88 Section 106 replaced

This clause makes amendments to section 106 for the process when an appeals committee is appointed and carries out tasks that would otherwise be performed by the Appeals Convenor. It also includes consequential changes to cross-references.

Clause 89 Section 107 amended

This clause amends section 107 to make drafting improvements and update cross-references.

Clause 90 Section 107B amended

This clause inserts section 107B(4) and (5) to support the lodging of appeals with the Office of the Appeals Convenor.

Clause 91 Section 110 amended

This clause inserts a new section 110(3) which provides that the Minister may give effect to a decision to allow an appeal against Part IV implementation conditions by publishing an amended Ministerial Statement setting out the conditions as amended on appeal without the requirement for consultation and agreement under section 45 following the appeal.

New Part VIIB – Environmental Monitoring Programmes*Clause 92 Part VIIB inserted*

This clause inserts a new Part VIIB which enables regulations to be made for the development of environmental monitoring programs to address cumulative environmental impacts in particular areas or from certain industries.

Section 110K set out the defined terms used. The definition of “environmental monitoring programme” restricts the programmes to monitoring of environmental effects of prescribed activities.

Section 110L provides a power to make regulations necessary to the development, implementation and operation of environmental monitoring programmes, including ancillary matters such as use of data obtained and the public reporting required.

Section 110M specifies the purposes for which funds received by way of levy or

penalty are to be applied to ensure that cost recovery charges must be applied only for purposes related to environmental monitoring programmes.

Section 110N provides that a levy shall be paid according to the regulations.

Section 110O allows the regulations to make provision for financial assurances to be required to secure payment of the levy.

Section 110P allows the regulations to provide for payment by instalments.

Section 110Q imposes a penalty of 20% per annum on unpaid levy amounts.

Section 110R allows the Minister to recover unpaid levy.

Section 110S provides an offence in relation to evasion or attempted evasion of the levy.

Amendments to Part VIII of the EP Act – General

Clause 93 Section 112 replaced

This clause deletes and replaces section 112, which deals with the offence of providing false information under the EP Act. It includes the provision of false information in response to a request under the Act as well as a requirement.

Clause 94 Section 112A amended

This clause amends section 112A to remove the requirement for a person to have objected at the time of providing information or answering a question in order to rely on the protection against self-incrimination.

Clause 95 Section 114 amended

This clause amends section 114 to reflect changes to the modified penalty provisions and to improve drafting. This clause also corrects a current omission in the Act by inserting a reference to offences under regulations.

Clause 96 Section 116A and 116B inserted

This clause inserts new sections 116A and 116B.

The new section 116A provides that certain matters are taken to be proved in the absence of proof to the contrary in proceeding for an offence under the EP Act. These include to the authority of the prosecutor to institute a prosecution, the validity of a signature on a prosecution notice and the appointment and authorisation of an investigator or authorised officer.

The new section 116B expands the provisions currently in section 51R in relation to the use of aerial photography. This amendment provides for the use of ‘remotely sensed images’ from image data sources to be admitted as evidence subject to limitations and requirements as currently apply to aerial photographs.

‘Image data source’ is defined to include remotely sensed images or digital or electronic information from which remotely sensed images can be produced, and which must be declared by regulations to be an image data source for the purposes of this section.

Clause 97 Section 120 amended

This amendment removes the reference to bilateral agreements, as this is now dealt with in Part VIIIA.

Clause 98 Section 121B inserted

This clause inserts a new section 121B which allows regulations to be made in relation to moneys paid or contributed under the EP Act. This includes moneys contributed under a Part IV implementation condition or clearing permit condition to an offset fund as well as cost recovered charges for Part IV or an environmental monitoring levy.

Regulations can provide for the type of account in which the funds must be held and may place further limits on how funds may be expended in addition to the general purpose for which the funds may be used under the EP Act.

Regulations may be made for fund governance arrangements, criteria for funding and public reporting requirements for the way moneys are spent.

Regulations may also require that income derived from the investment of moneys may be applied for the specified purpose, overriding the general position under the *Financial Management Act 2006* that this income be credited to consolidated revenue.

Clause 99 Section 122B inserted

This clause inserts a new section 122B which provides head powers to make regulations regarding publication and the form of documentation under the EP Act.

Section 122B allows for regulations to be made regarding publication of any document received under the EP Act, including measures and procedures for protecting confidentiality. The section allows for further publishing requirements to be made by regulations in addition to those already in the EP Act. The regulations will allow for modern methods of publication.

New Part VIII A– Bilateral agreements with the Commonwealth

Clause 100 Part VIII A inserted

Part VIII A inserts a new part into the EP Act to provide that State entities (the Minister, the EPA or the Chief Executive Officer) may perform functions in respect of a bilateral matter in a manner that is consistent with, and enables the implementation of, a bilateral agreement. The Bill also provides for fees to be prescribed for recovery of costs to these State entities to discharge additional obligations in implementing bilateral agreements.

Section 124A sets out the defined terms used in the new Part VIII A, which includes a revised definition of ‘bilateral agreement’.

Section 124B provides that Part VIII A has effect despite any other provision of the EP Act.

Section 124C provides functions and powers to the EPA to facilitate the implementation of bilateral agreements. These provisions are currently in section 16(aa) and 17(4).

Section 124D allows for regulations to be made which provide for procedures made under which a person may make an application for a matter to be dealt with under a bilateral agreement.

Section 124E provides that State entities may perform functions under the EP Act in a way consistent with a bilateral. This may include having regard to guidelines, policies, plans and information in accordance with a bilateral agreement. Subsection (3) describes the way that the EPA may take into account bilateral agreement matters in carrying out its functions. Subsection (4) sets out how bilateral agreements may alter the Minister’s functions in consulting and reaching an implementation agreement under Part IV. Subsection (5) sets out how bilateral agreements may alter the CEO’s functions when exercising powers under Part V Division 2 (clearing of native vegetation). Subsection (6) describes how bilateral agreements may alter functions in relation to appeal in Part VII.

Section 124F provides a power for making regulations to prescribe or determine fees payable to a State entity in respect of bilateral matters. These fees will be the costs that are additional to existing functions undertaken by the State entity.

Section 124G provides that the EP Act provisions relating to the confidentiality and disclosure of information apply to information obtained in or for the purposes of functions performed in respect of Part VIII A bilateral matters. This section authorises disclosure of information to a person performing functions under the EPBC Act, provided that the information facilitates the implementation of a bilateral agreement, in which case the offence in section 120 will not apply.

Section 124H provides that regulations may be made for matters that are required or permitted by Part VIIIA to be prescribed, or that are necessary or convenient to be prescribed, if they give effect to Part VIIIA, or facilitate the implementation of bilateral agreements.

Amendments to Part IX of the EP Act – Transitional

Clause 101 Part IX Division 4 inserted

This clause inserts a new Division dealing with the transitional provisions for the *Environmental Protection Amendment Act 2020*.

The following sections are inserted:

Section 133A defines “amending Act” for the purposes of the Division.

Section 133B provides that environmentally sensitive areas declared before the coming into operation of the Amendment Act continue to have effect, until regulations are made prescribing environmentally sensitive areas.

Section 133C provides that clearing permit applications made before the commencement of the Amendment Act will be treated as a referral under new section 51DA.

Section 133D provides that an application for a clearing injunction existing before the commencement of the Amendment Act has effect on or after commencement as an application for an injunction under the new section 99ZC. Section 133D also provides that a clearing injunction in force immediately before the commencement of the Amendment Act has effect on or after commencement as if it were an injunction under section 99ZC.

Section 133E defines terms used in relation to transitional provisions applying to Part V Division 3 amendments.

Section 133F enables works approvals granted and in effect before the commencement of the Bill to continue in force under the provisions in effect immediately before commencement. The CEO may amend a works approval so that it conforms to the new provisions and the form of licence under the new provisions by written notice, and after this notice is given it is treated as a licence under the new provisions.

Section 133G enables licences granted and in effect before the commencement of the Bill to continue in force under the provisions in effect immediately before commencement. When a licence granted under the old provisions is amended under Part V Division 3, the amended licence becomes a licence under the new provisions.

Sections 133H, 133I and 133J provide for pending applications in relation to works approvals or licences made but not determined before the commencement day to be treated as applications in relation to a licence under the new Part V Division 3.

Section 133K provides that the former provisions continue to apply in relation to an appeal against a decision of the CEO in respect of a refusal to grant works approvals and licences made before the commencement of Part 2 of the Bill. If a decision is made to uphold an appeal, the relevant provision of the new Part V Division 3 will apply.

Section 133L provides that certain former provisions of the Act continue to apply to appeals in respect of decisions relating to works approvals and licences made before the commencement of the Bill.

Section 133M provides that the referral of a revised proposal or new proposal in respect of a major change of conditions which has occurred before the commencement of the Amendment Act is to be treated as the referral of a significant amendment under the new provisions. An application for a change to a proposal under assessment under section 43A prior to the commencement of the Amendment Act is to be dealt with under the new provisions. An application for a change to a proposal under section 45C prior to the commencement of the Amendment Act will be dealt with under the old provisions. A request made prior to the commencement of the Amendment Act to keep certain material confidential under section 39(3) and (4) will be dealt with under the old provisions.

Section 133N provides that the person holding the position of Chairman or Deputy Chairman prior to the commencement of the Bill will immediately hold office after commencement as Chair or Deputy Chair.

Section 133O provides that the Governor may make regulations for dealing with transitional matters that have not been provided for under Part IX, Division 4.

Section 133P provides that the *Interpretation Act 1984* applies to the amendments made by the Bill.

Amendments to Schedule 1 of the EP Act – Penalties

Clause 102 Schedule 1 Part 1 Division 1 amended

This clause increases the penalty for an individual implementing a proposal where the Minister has reached an agreement under Part IV that it should not be implemented from \$125,000 to \$500,000, and the daily penalty is increased from \$25,000 to \$100,000. This amendment also makes changes to section cross-references.

Clause 103 Schedule 1 Part 1 Division 2 amended

This clause increases the penalty for a body corporate implementing a proposal where the Minister has reached an agreement under Part IV that it should not be implemented from \$250,000 to \$1,000,000 and the daily penalty is increased from \$50,000 to \$200,000. This amendment also makes changes to section cross-references.

Clause 104 Schedule 1 Part 2 Division 1 amended

This clause makes consequential amendments to reflect the new provisions and offences in Part V Division 3. It also refers to the new offences in relation to environmental protection covenants.

Clause 105 Schedule 1 Part 2 Division 2 amended

This clause makes consequential amendments to reflect the new provisions and offences in Part V Division 3. It also refers to the new offences in relation to environmental protection covenants.

Clause 106 Schedule 1 Part 2 Division 3 amended

This clause increases the penalty for the offences of providing false information and disclosing information obtained under the EP Act from \$50,000 to \$100,000. This clause also makes consequential amendments to section cross-references.

Clause 107 Schedule 1 Part 3 amended

This clause provides a penalty of \$5,000 with a daily penalty of \$1,000 for the offence of failing to comply with a direction to provide information or attend an interview under section 90.

Amendments to Schedule 2 of the EP Act – Matters in respect of which regulations may be made

Clause 108 Schedule 2 amended

This clause amends item 2 to deal with the issue raised by the High Court decision of *Forrest & Forrest Pty Ltd v Wilson* [2017] HCA 30 where there is a requirement in legislation that an application was “accompanied by” certain material meant it had to be provided at the same time as the application or it would invalidate the application. Because the current EP Act contains a number of requirements that an application be “accompanied by the prescribed fee”, the power to make regulations as to fees has been expanded.

The wording of item 14 has been amended to reflect that the term “prescribed premises” is no longer used.

A new item 26 allows activities to be prescribed rather than premises.

A new item 35B allows regulations to be made providing for notices, orders or other documents to be given by electronic communications such as email.

Item 36 has been amended to refer to the new section 122B.

A new item 36B has been inserted to allow regulations to be made establishing a scheme for the accreditation of persons as environmental practitioners. The scheme will be voluntary and will recognise relevant qualifications and experience.

Item 37 is amended to allow the maximum penalty for offences under the regulations to be increased from \$5,000 to \$20,000.

Amendments to Schedule 5 of the EP Act – Principles for clearing native vegetation

Clause 109 Schedule 5 amended

This clause expands the definition of threatened ecological community to include ecological communities listed, designated or declared as threatened, endangered or vulnerable under a written law or the *Environment Protection and Biodiversity Conservation Act 1999* as well as the definition in the *Biodiversity Conservation Act 2016*.

Amendments to Schedule 6 of the EP Act – Clearing for which a permit is not required

Clause 110 Schedule 6 amended

Item 1 is amended to replace “written law” with “prescribed enactment”. This will allow regulations to list which provisions fall within the meaning of item 1.

Item 2 is amended to make consequential changes.

Item 3 is replaced with a new provision with improved drafting and to include the new power under section 33(1)(aa) of the *Conservation and Land Management Act*, which was recently inserted.

Item 10 is amended to refer to additional provisions of the *Bush Fires Act 1954*.

A new item 10B refers to clearing done in accordance with the *Energy Operators (Powers) Act 1979*, section 54.

New items 15 and 16 refers to clearing done to comply with a notice under section 3.25(1) of the *Local Government Act 1995*, and clearing done by a local government when a person fails to comply with a notice.

Other amendments

Clause 111 Amendments as to gender neutral language

This clause makes a number of amendments to replace “he”, “his” or “him” with gender neutral language.

Clause 112 Other provisions amended

This clause makes a number of amendments consequential on other amendments or to make minor drafting improvements.

Part 3 – Other Acts amended

Clause 113 Biodiversity Conservation Act 2016 amended

This clause updates section 43(1)(b) of the *Biodiversity Conservation Act 2016* to refer to the CEO’s new ability in section 51E(1A) to request further information in relation to an application for a clearing permit. It also amends section 97(f)(i) of the *Biodiversity Conservation Act 2016* to update a cross-reference to an amended section of the EP Act.

Clause 114 Bush Fires Act 1954 amended

This clause amends section 24C of the *Bush Fires Act 1954* by replacing the definition of rubbish tip to mean disposal premises as defined in section 3 of the *Waste Avoidance and Resource Recovery Levy Act 2007*.

Clause 115 Contaminated Sites Act 2003 amended

This clause amends the *Contaminated Sites Act 2003* to include a reference to the new section 116A (Proof not required of certain matters) in section 92 of the *Contaminated Sites Act 2003*.

Clause 116 Mining Act 1978 amended

This clause amends the *Mining Act 1978* to update cross-references to provisions in the EP Act where the numbering has changed as part of the amendments.

Clause 117 Waste Avoidance and Resource Recovery Act 2007 amended

This clause amends the *Waste Avoidance and Resource Recovery Act 2007* by replacing a “licensee or occupier” under section 74(a) with “the holder of a licence, or a person”.

Clause 118 Waste Avoidance and Resource Recovery Levy Act 2007 amended

This clause amends section 3 of the *Waste Avoidance and Resource Levy Recovery Act 2007* by replacing paragraph (b) of the definition of *disposal premises* and inserting a definition of *licensable waste activity* for consistency with the new Part V Division 3 of the EP Act.