

Queensland



ENVIRONMENTAL PROTECTION ACT 1994

**Reprinted as in force on 1 January 2001
(includes amendments up to Act No. 64 of 2000)**

Warning—see last endnote for uncommenced amendments

Reprint No. 4 revised edition

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Information about this reprint

This Act is reprinted as at 1 January 2001. The reprint—

- shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c))
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind (Reprints Act 1992 s 5(d)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have also been made to—

- use standard punctuation consistent with current drafting practice (s 27)
- reorder provisions consistent with current drafting practice (s 30A)
- use aspects of format and printing style consistent with current drafting practice (s 35)
- correct minor errors (s 44).

Also see endnotes for information about—

- **when provisions commenced**
- **provisions that have not commenced and are not incorporated in the reprint**
- **editorial changes made in the reprint, including—**
 - **table of corrected minor errors**
 - **table of renumbered provisions**
- **editorial changes made in earlier reprints.**

Dates shown on reprints

Reprints dated at last amendment All reprints produced on or after 1 July 2002, hard copy and electronic, are dated as at the last date of amendment. Previously reprints were dated as at the date of publication. If a hard copy reprint is dated earlier than an electronic version published before 1 July 2002, it means the legislation was not further amended and the reprint date is the commencement of the last amendment.

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Revised edition indicates further material has affected existing material. For example—

- a correction
- a retrospective provision
- other relevant information.

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ENVIRONMENTAL PROTECTION ACT 1994

[as amended by all amendments that commenced on or before 1 January 2001]

An Act about the protection of Queensland's environment

CHAPTER 1—PRELIMINARY

PART 1—INTRODUCTORY PROVISIONS

Short title

1. This Act may be cited as the *Environmental Protection Act 1994*.

Commencement

- 2.(1) This Act commences on a day to be fixed by proclamation.

(2) However, section 223¹ and schedule 2 (so far as they relate to the amendment of the *Wet Tropics World Heritage Protection and Management Act 1993*) commence, or are taken to have commenced, on 1 November 1994.

¹ Previous section 223 (Acts amended) was omitted under the *Reprints Act 1992*, section 40. See Reprint 1.

PART 2—OBJECT AND ACHIEVEMENT OF ACT

Object

3. The object of this Act is to protect Queensland's environment while allowing for development that improves the total quality of life, both now and in the future, in a way that maintains the ecological processes on which life depends (“**ecologically sustainable development**”).

How object of Act is to be achieved

4.(1) The protection of Queensland's environment is to be achieved by an integrated management program that is consistent with ecologically sustainable development.

(2) The program is cyclical and involves the following phases—

- (a) **phase 1**—establishing the state of the environment and defining environmental objectives;
- (b) **phase 2**—developing effective environmental strategies;
- (c) **phase 3**—implementing environmental strategies and integrating them into efficient resource management;
- (d) **phase 4**—ensuring accountability of environmental strategies.

(3) The relationship between each of the phases is shown in the figure appearing at the end of this Act.

(4) Phase 1 is achieved by—

- (a) researching the state of the environment, including essential ecological processes; and
- (b) deciding environmental values to be protected or achieved by consulting industry, government departments and the community.

(5) Phase 2 is achieved by—

- (a) developing environmental protection policies that, among other things—
 - (i) decide environmental indicators; and

- (ii) establish ambient and emission standards for contaminants; and
 - (iii) require waste management, including waste prevention and minimisation; and
 - (iv) advise on management practices; and
- (b) promoting environmental responsibility and involvement within the community.
- (6) Phase 3** is achieved by—
- (a) integrating environmental values into land use planning and management of natural resources; and
 - (b) ensuring all reasonable and practicable measures are taken to protect environmental values from all sources of environmental harm; and
 - (c) monitoring the impact of the release of contaminants into the environment; and
 - (d) requiring persons who cause environmental harm to pay costs and penalties for the harm.
- (7) Phase 4** is achieved by—
- (a) reviewing the results of human activities on the environment; and
 - (b) evaluating the efficiency and effectiveness of environmental strategies; and
 - (c) reporting publicly on the state of the environment.

Obligations of persons to achieve object of Act

5. If, under this Act, a function or power is conferred on a person, the person must perform the function or exercise the power in the way that best achieves the object of this Act.

Community involvement in administration of Act

6. This Act is to be administered, as far as practicable, in consultation with, and having regard to the views and interests of, industry, Aborigines

and Torres Strait Islanders under Aboriginal tradition and Island custom, interested groups and persons and the community generally.

PART 3—INTERPRETATION

Division 1—Dictionary

Definitions—dictionary

7. The dictionary in schedule 3 defines particular words used in this Act.

Division 2—Key concepts

Subdivision 1—The environment and its values

Environment

8. “**Environment**” includes—

- (a) ecosystems and their constituent parts, including people and communities; and
- (b) all natural and physical resources; and
- (c) the qualities and characteristics of locations, places and areas, however large or small, that contribute to their biological diversity and integrity, intrinsic or attributed scientific value or interest, amenity, harmony and sense of community; and
- (d) the social, economic, aesthetic and cultural conditions that affect, or are affected by, things mentioned in paragraphs (a) to (c).

Environmental value

9. “**Environmental value**” is—

- (a) a quality or physical characteristic of the environment that is

- conducive to ecological health or public amenity or safety; or
- (b) another quality of the environment identified and declared to be an environmental value under an environmental protection policy or regulation.

Subdivision 2—Environmental contamination

Contamination

10. “Contamination” of the environment is the release (whether by act or omission) of a contaminant into the environment.

Contaminant

11. A “contaminant” can be—

- (a) a gas, liquid or solid; or
- (b) an odour; or
- (c) an organism (whether alive or dead), including a virus; or
- (d) energy, including noise, heat, radioactivity and electromagnetic radiation; or
- (e) a combination of contaminants.

Noise

12. “Noise” includes vibration of any frequency, whether emitted through air or another medium.

Waste

13.(1) “Waste” includes any thing that is—

- (a) left over, or an unwanted by-product, from an industrial, commercial, domestic or other activity; or
- (b) surplus to the industrial, commercial, domestic or other activity generating the waste.

Example of paragraph (a)—

Abandoned or discarded material from an activity is left over, or an unwanted by-product, from the activity.

(2) “**Waste**” can be a gas, liquid, solid or energy, or a combination of any of them.

(3) A thing can be waste whether or not it is of value.

Subdivision 3—Environmental harm and nuisance

Environmental harm

14.(1) “Environmental harm” is any adverse effect, or potential adverse effect (whether temporary or permanent and of whatever magnitude, duration or frequency) on an environmental value, and includes environmental nuisance.

(2) “**Environmental harm**” may be caused by an activity—

- (a) whether the harm is a direct or indirect result of the activity; or
- (b) whether the harm results from the activity alone or from the combined effects of the activity and other activities or factors.

Environmental nuisance

15. “Environmental nuisance” is unreasonable interference or likely interference with an environmental value caused by—

- (a) noise, dust, odour, light; or
- (b) an unhealthy, offensive or unsightly condition because of contamination; or
- (c) another way prescribed by regulation.

Material environmental harm

16.(1) “Material environmental harm” is environmental harm (other than environmental nuisance)—

- (a) that is not trivial or negligible in nature, extent or context; or

- (b) that causes actual or potential loss or damage to property of an amount of, or amounts totalling, more than the threshold amount but less than the maximum amount; or
- (c) that results in costs of more than the threshold amount but less than the maximum amount being incurred in taking appropriate action to—
 - (i) prevent or minimise the harm; and
 - (ii) rehabilitate or restore the environment to its condition before the harm.

(2) In this section—

“maximum amount” means the threshold amount for serious environmental harm.

“threshold amount” means \$5 000 or, if a greater amount is prescribed by regulation, the greater amount.

Serious environmental harm

17.(1) “Serious environmental harm” is environmental harm (other than environmental nuisance)—

- (a) that causes actual or potential harm to environmental values that is irreversible, of a high impact or widespread; or
- (b) that causes actual or potential harm to environmental values of an area of high conservation value or special significance; or
- (c) that causes actual or potential loss or damage to property of an amount of, or amounts totalling, more than the threshold amount; or
- (d) that results in costs of more than the threshold amount being incurred in taking appropriate action to—
 - (i) prevent or minimise the harm; and
 - (ii) rehabilitate or restore the environment to its condition before the harm.

(2) In this section—

“threshold amount” means \$50 000 or, if a greater amount is prescribed by regulation, the greater amount.

Subdivision 4—Environmentally relevant activities

Meaning of “environmentally relevant activity”

18. An **“environmentally relevant activity”** means—

- (a) a mining activity;² or
- (b) another activity prescribed under section 19 as an environmentally relevant activity.

Environmentally relevant activity may be prescribed

19. A regulation may prescribe an activity, other than a mining activity, as an environmentally relevant activity if the Governor in Council is satisfied—

- (a) a contaminant will or may be released into the environment when the activity is carried out; and
- (b) the release of the contaminant will or may cause environmental harm.

Levels for environmentally relevant activities

20.(1) An environmentally relevant activity, other than a mining activity, must be prescribed under a regulation as a level 1 or level 2 environmentally relevant activity, depending on the risk of environmental harm.

(2) A standard mining activity is a level 2 environmentally relevant activity.

(3) A mining activity other than standard mining activity is a level 1 environmentally relevant activity.

² See section 147 (What is a “mining activity”).

*Subdivision 5—Environmental management***Best practice environmental management**

21.(1) The “**best practice environmental management**” of an activity is the management of the activity to achieve an ongoing minimisation of the activity’s environmental harm through cost-effective measures assessed against the measures currently used nationally and internationally for the activity.

(2) In deciding the “**best practice environmental management**” of an activity, regard must be had to the following measures—

- (a) strategic planning by the person carrying out, or proposing to carry out, the activity;
- (b) administrative systems put into effect by the person, including staff training and monitoring and review of the systems;
- (c) public consultation carried out by the person;
- (d) product and process design;
- (e) waste prevention, treatment and disposal.

(3) Subsection (2) does not limit the measures to which regard may be had in deciding the “**best practice environmental management**” of an activity.

PART 4—OPERATION OF ACT**Act binds all persons**

22. This Act binds all persons, including the State, and, as far as the legislative power of the Parliament permits, the Commonwealth and the other States.

Relationship with other Acts

23.(1) This Act is in addition to, and does not limit, any other Act.

(2) If this Act conflicts with an Act as follows, that Act prevails, but only to the extent of the conflict—

- *Ambulance Service Act 1991*
- *Fire and Rescue Authority Act 1990*
- *Radiation Safety Act 1999*
- *State Counter-Disaster Organisation Act 1975*
- *Transport Operations (Marine Pollution) Act 1995.*

Effect of Act on other rights, civil remedies etc.

24.(1) This Act does not limit any civil right or remedy that exists apart from this Act, whether at common law or otherwise.

(2) Without limiting subsection (1), compliance with this Act does not necessarily show that an obligation that exists apart from this Act has been satisfied or has not been breached.

(3) In addition, a breach of the general environmental duty does not, of itself, give rise to a civil right or remedy.

Extra-territorial application of Act

25. A person commits an offence against this Act if—

- (a) the person causes environmental harm within the State by conduct engaged in outside the State; and
- (b) the conduct would constitute the offence against this Act if it were engaged in by the person within the State.

CHAPTER 2—ENVIRONMENTAL PROTECTION POLICIES

Preparation of draft policies

26. The Minister may prepare a draft environmental protection policy to enhance or protect Queensland's environment.

Scope of policies

27.(1) An environmental protection policy may be made about the environment or anything that affects or may affect the environment.

(2) Without limiting subsection (1), an environmental protection policy may be made about any of the following—

- (a) a contaminant, including, for example, an ozone depleting substance;
- (b) an industry or activity;
- (c) a technology or process;
- (d) an environmental value;
- (e) waste management;
- (f) contamination control practice;
- (g) land, air or water quality;
- (h) noise;
- (i) litter.

Contents of policies

28.(1) An environmental protection policy must—

- (a) state that the policy applies to the environment generally or to an aspect or part of the environment specified in the policy; and
- (b) identify the environmental values to be enhanced or protected under the policy.

(2) An environmental protection policy may—

- (a) state the objectives to be achieved and maintained under the policy; or
- (b) state indicators, parameters, factors or criteria to be used in measuring or deciding any quality or condition of the environment; or
- (c) establish a program by which the stated objectives are to be achieved and maintained, including, for example, the following—
 - (i) quantifying ambient conditions;
 - (ii) the qualities and maximum quantities of any contaminant permitted to be released into the environment;
 - (iii) the minimum standards to be complied with in the installation or operation of vehicles, plant or equipment for the control of contaminants or waste from stated sources or places;
 - (iv) measures designed to protect the environment or minimise the possibility of environmental harm; or
- (d) provide for a program performance assessment procedure.

(3) An environmental protection policy may make provision about anything about which a regulation may be made under this Act, and, in particular—

- (a) prescribing offences for contraventions of the policy; and
- (b) fixing a maximum penalty of a fine of not more than 40 penalty units for the contravention.

Notice of proposal to prepare draft policy

29.(1) Before preparing a draft environmental protection policy, the Minister must give public notice of a proposal to prepare the draft policy.

(2) The notice must—

- (a) be published—
 - (i) once a week for 2 consecutive weeks in a newspaper circulating generally throughout the State; and

- (ii) if the policy applies only to a particular area of the State—in a newspaper circulating generally in the area; and
- (b) if the policy is about an aspect or part of the environment—state the aspect or part; and
- (c) state where copies of the proposal may be obtained; and
- (d) invite submissions on the proposal to prepare the draft policy from government departments, public authorities, local governments, land-holders, industry, interested groups and persons and members of the public; and
- (e) state a day by which submissions may be made to the Minister.

(3) The last day for making submissions must be at least 40 days after the first publication of the notice in the newspaper mentioned in subsection (2)(a)(i).

(4) The Minister may also publish the notice in other ways.

Preparation of draft policy

30. In preparing a draft environmental protection policy, the Minister must consider all submissions properly made to the Minister.

Notice of preparation of draft policy

31.(1) When a draft environmental protection policy has been prepared, the Minister must give public notice of the draft policy.

(2) The notice must—

- (a) be published—
 - (i) once a week for 2 consecutive weeks in a newspaper circulating generally throughout the State; and
 - (ii) if the policy applies only to a particular area of the State—in a newspaper circulating generally in the area; and
- (b) state where copies of the draft policy may be obtained; and
- (c) invite submissions on the draft policy from government departments, public authorities, local governments, land-holders,

industry, interested groups and persons and members of the public; and

(d) state a day by which submissions may be made to the Minister.

(3) The last day for making submissions must be at least 40 days after the first publication of the notice in the newspaper mentioned in subsection (2)(a)(i).

(4) The Minister may also publish the notice in other ways.

Preparation of final policy

32.(1) In preparing a final environmental protection policy, the Minister must consider all submissions properly made to the Minister on the draft policy.

(2) If, when making a submission, a person asks the Minister for a response on the submission, the Minister must advise the person in writing whether the submission was accepted or rejected and, if it was rejected, the reasons for the rejection.

Approval of final policy

33.(1) A final environmental protection policy is subordinate legislation and does not have effect until it is approved by the Governor in Council.

(2) The chief executive must keep the approved policy open for inspection by members of the public during office hours on business days at—

(a) the department's head office; and

(b) other places the chief executive considers appropriate.

Giving effect to policies

34. On approval of an environmental protection policy, the administering authority must give effect to the policy.

Amendment and repeal of policies

35.(1) An environmental protection policy may be amended by a later policy only if the procedures applying to the preparation and approval of policies under this chapter are followed for the later policy.

(2) However, subsection (1) does not apply to—

(a) the amendment of an environmental protection policy to—

(i) correct an error in the policy; or

(ii) make a change (other than a change of substance) in the policy; or

(iii) if the policy or a regulation provides that an amendment of a stated type may be made to the policy by amendment under this subsection—make an amendment of that type; or

(b) the amendment or repeal of an environmental protection policy because of the commencement under the national scheme laws of a national environment protection measure.

(3) In addition, the following sections do not apply to the preparation and approval of the later policy—

- section 29 (Notice of proposal to prepare draft policy)
- section 30 (Preparation of draft policy).

Review of policies

36.(1) The Minister must review each environmental protection policy within 7 years after its commencement.

(2) To help the Minister review an environmental protection policy, the chief executive must prepare a report on the policy's environmental effectiveness and economic efficiency.

(3) In reviewing the policy, the Minister must have regard to the chief executive's report.

(4) The procedures applying to the preparation and approval of policies under this chapter apply to the review of policies with all necessary changes and any changes prescribed by regulation.

CHAPTER 3—ENVIRONMENTAL IMPACT STATEMENTS

PART 1—EIS PROCESS

Division 1—Preliminary

Subdivision 1—Application

When EIS process applies

37.(1) This part applies for a project if—

- (a) an EIS requirement is in force in relation to an application for an environmental authority (mining activities) and a relevant mining activity for the application is, or is part of, the project; or
- (b) an EIS has been required for the project under an Act as follows for which it has, under the Act, been decided or required that this part applies to the preparation of the EIS—
 - (i) the Commonwealth Environment Act;
 - (ii) the State Development Act;³
 - (iii) another State Act or another Commonwealth Act; or
- (c) the voluntary preparation of an EIS for the project has been approved under part 2;⁴ or
- (d) the project is of a type prescribed under a regulation for which approval by a Commonwealth or State authority is required.

(2) However, an EIS under this Act can not be used for making a decision under the Integrated Planning Act, other than a decision in relation to a project mentioned in subsection (1)(a).

³ See the State Development Act, part 4, divisions 2 (Significant project) and 3 (EIS process).

⁴ Part 2 (Voluntary preparation of EIS)

(3) In this section—

“**authority**”, for the Commonwealth, includes the Minister of the Commonwealth for the time being administering the Commonwealth Environment Act.

“**EIS**” includes a statement, however called, that is similar to an EIS.

“**project**” includes—

- (a) a development or proposed development; and
- (b) an action or proposed action; and
- (c) a plan or policy.

Subdivision 2—Definitions for pt 1

Who is an “affected person” for a project

38.(1) A person is an “**affected person**” for a project if the person is—

- (a) a person mentioned in subsection (2) for the operational land or any land joining it; or
- (b) any of the following under the *Native Title Act 1993* (Cwlth) for the operational land or for an area that includes any of the land—
 - (i) a registered native title body corporate;
 - (ii) a registered native title claimant;
 - (iii) a representative Aboriginal/Torres Strait Islander body; or
- (c) a relevant local government for the operational land.

(2) For subsection (1)(a), the persons are as follows—

- (a) for freehold land—a registered proprietor;
- (b) for land that is held from the State for an estate or interest less than fee simple and for which the interest is recorded in a register mentioned in the *Land Act 1994* (“**Land Act**”), section 276⁵—a person recorded in the register as the registered holder of the

⁵ *Land Act 1994*, section 276 (Registers to be kept by chief executive)

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- interest;
- (c) for land subject to a mining claim, mineral development licence or mining lease—a holder of, or an applicant for, the tenement;
 - (d) for land subject to an authority to prospect or a lease or licence under the *Petroleum Act 1923*—
 - (i) a holder of the authority; or
 - (ii) a lessee under the lease; or
 - (iii) a licensee under the licence;
 - (e) for land under the Land Act or the *Nature Conservation Act 1992* (“NCA”) for which there are trustees—a trustee of the land;
 - (f) for Aboriginal land under the *Aboriginal Land Act 1991* (“ALA”) that is taken to be a reserve because of section 87(2) or 87(4)(b)⁶ of that Act—a grantee of the land;
 - (g) for DOGIT land under the ALA or the *Torres Strait Islander Land Act 1991*—a trustee for the land;
 - (h) for land held under a lease under the *Local Government (Aboriginal Lands) Act 1978*, section 6⁷—a relevant local government;
 - (i) for Torres Strait Islander land under the *Torres Strait Islander Land Act 1991* that is taken to be a reserve because of section 84(2) or 84(4)(b)⁸ of that Act—a grantee of the land;
 - (j) for land under a lease from the State under the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* that has been excised from land granted in trust for Aboriginal or Torres Strait Islander purposes under the Land Act—a trustee of the land;
 - (k) for land that is any of the following, the State—
 - (i) unallocated State land;

⁶ *Aboriginal Land Act 1991*, section 87 (Application of Mineral Resources Act)

⁷ *Local Government (Aboriginal Lands) Act 1978*, section 6 (Grant of leases to councils)

⁸ *Torres Strait Islander Land Act 1991*, section 84 (Application of Mineral Resources Act)

- (ii) a reserve under the Land Act for which there is no trustee;
 - (iii) a national park, national park (Aboriginal land), national park (scientific), national park (Torres Strait Islander land), national park (recovery) or forest reserve under the NCA;
 - (iv) a conservation park under the NCA for which there are no trustees;
 - (v) a State forest or timber reserve under the *Forestry Act 1959*;
 - (vi) a State controlled road under the *Transport Infrastructure Act 1994*;
 - (vii) a fish habitat area under the *Fisheries Act 1994*.
- (l) another person prescribed under a regulation.

Other definitions

39. In this part—

“business days” does not include a business day between 20 December and 5 January in the following year.

“comment period”, for an EIS, means the comment period for the EIS under section 42(2)(e) and (3) or section 68(3)(b)(i).

“draft terms of reference”, for an EIS, means draft terms of reference submitted under section 41.

“environmental management plan” means—

- (a) an environmental management document; or
- (b) another document, however called, that proposes conditions and mechanisms to manage the potential environmental impact of the project.

“final terms of reference”, for an EIS, means the final terms of reference for the EIS published under section 46.

“interested person” means an interested person proposed by the proponent under section 41(3)(b).

“operational land” means the land on which the project is to be carried out.

“**person**” includes a body of persons, whether incorporated or unincorporated.

“**properly made submission**” see section 55(2).

“**proponent**” means the person who proposes the project to which this part applies.

“**submission period**”, for an EIS, means—

- (a) the submission period for the EIS under section 52(1)(e) and (2); or
- (b) if section 68 applies—any new submission period fixed under section 68(3)(b)(ii).

Subdivision 3—Purposes of EIS

Purposes

40. The purposes of an EIS are as follows—

- (a) to assess—
 - (i) the potential adverse and beneficial environmental, economic and social impacts of the project; and
 - (ii) management, monitoring, planning and other measures proposed to minimise any adverse environmental impacts of the project;
- (b) to consider feasible alternative ways to carry out the project;
- (c) to give enough information about the matters mentioned in paragraphs (a) and (b) to the proponent, Commonwealth and State authorities and the public;
- (d) to prepare or propose an environmental management plan for the project;
- (e) to help the administering authority decide an environmental authority application for which the EIS is required;
- (f) to give information to other Commonwealth and State authorities to help them make informed decisions;

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- (g) to meet any assessment requirements under—
 - (i) the Commonwealth Environment Act for a project that is, or includes, a controlled action under that Act; or
 - (ii) a bilateral agreement;⁹
- (h) to allow the State to meet its obligations under a bilateral agreement.

*Division 2—Terms of reference stage**Subdivision 1—Draft terms of reference***Submission**

41.(1) The proponent must submit to the chief executive draft terms of reference for the EIS that allow the purposes of the EIS to be achieved for the project.

(2) The submitted draft must—

- (a) be in the approved form; and
- (b) be accompanied by the fee prescribed under a regulation; and
- (c) include any matter prescribed under a regulation.

(3) Also, if an approval has not been given under part 2¹⁰ for the project, the submitted draft must be accompanied by the following—

- (a) a written description of the project and the operational land;
- (b) a list stating the name and address of each person the proponent proposes as an interested person for the project;

⁹ For what is a “controlled action” under the Commonwealth Environment Act, see section 67 (What is a controlled action?) of that Act. For assessment requirements of controlled actions, see the Commonwealth Environment Act, chapter 4, part 8 (Assessing impacts of controlled actions). For bilateral agreements, see the Commonwealth Environment Act, chapter 3 (Bilateral agreements).

¹⁰ Part 2 (Voluntary preparation of EIS)

- (c) a statement of how the proponent proposes to consult with the interested persons;
- (d) a list of the names and addresses of the affected persons for the project.

Subdivision 2—Public notification of draft terms of reference

Preparation of TOR notice

42.(1) The chief executive must, within 15 business days after the draft terms of reference are submitted, give the proponent written notice about the draft (the **“TOR notice”**) for public notification.

(2) The notice must state the following—

- (a) a description of the project and the operational land;
- (b) that the proponent has prepared draft terms of reference for the EIS;
- (c) where or how the draft may be obtained;¹¹
- (d) that anyone may make written comments to the chief executive about the draft;
- (e) a period decided by the chief executive (the **“comment period”**) during which comments may be made;
- (f) another matter prescribed under a regulation.

(3) The comment period must not end before 30 business days after the notice is published.

Public notification

43.(1) The chief executive must publish the TOR notice within 5 business days after giving it to the proponent.¹²

¹¹ See section 65 (Public access to draft terms of reference or submitted EIS).

¹² See section 558 (Publication of decision or document by administering authority).

(2) The proponent must, if asked by the chief executive, pay the chief executive's reasonable costs incurred in publishing the notice.

(3) The proponent must, within the 5 business days, give a copy of the notice to—

- (a) each affected person for the project; and
- (b) each interested person; and
- (c) any other person decided by the chief executive.

(4) The chief executive may decide another person for subsection (3)(c) only by giving the proponent an information notice about the decision before the notice is published.

Proponent to be given comments

44. The chief executive must, within 10 business days after the comment period ends, give the proponent a copy of all comments received by the chief executive within the period.

Advice to chief executive

45. The proponent must, within the period prescribed under a regulation, give the chief executive—

- (a) a written summary of the comments; and
- (b) a statement of the proponent's response to the comments; and
- (c) any amendments of the draft terms of reference the proponent proposes because of the comments.

Subdivision 3—Final terms of reference

Finalising terms of reference

46.(1) The chief executive must, within the period prescribed under a regulation, do the following—

- (a) consider the documents mentioned in section 45;

- (b) prepare the final terms of reference;
- (c) give the proponent a copy of the final terms of reference;
- (d) publish the final terms of reference.

(2) The proponent must, if asked by the chief executive, pay the chief executive's reasonable costs incurred in publishing the final terms of reference.

Division 3—Submission stage

When EIS may be submitted

47.(1) The proponent may submit the EIS to the chief executive only within—

- (a) 2 years after the final terms of reference are given to the proponent; or
- (b) any longer period decided by the chief executive before or after the 2 years ends.

(2) If an EIS is not submitted under subsection (1)—

- (a) the final terms of reference cease to have effect; and
- (b) division 2 must be complied with again before the EIS may be submitted.

Chief executive may require copies of EIS

48.(1) The chief executive may, at any time before the submission period ends, by written notice require the proponent to give the chief executive a stated number of copies of the submitted EIS that the chief executive reasonably requires.

(2) The notice may require—

- (a) the copies to be in hard copy form or in an electronic form or forms; and
- (b) a stated part of the stated number to be given in hard copy form

and a stated part of the number to be given in an electronic form or forms.

Decision on whether EIS may proceed

49.(1) The chief executive must, within the period prescribed under a regulation, consider the submitted EIS and decide whether to allow it to proceed under divisions 4 to 6.

(2) The chief executive may allow the EIS to proceed only if the chief executive considers it addresses the final terms of reference in an acceptable form.

(3) If the decision is to allow the EIS to proceed, the chief executive may also fix the submission period for the EIS.

(4) However, the period fixed must be at least 20 business days and must end at least 20 business days after the EIS notice is published.

(5) The chief executive must, within 10 business days after the decision is made, give the proponent written notice of the decision and of any submission period fixed.

(6) If the decision is to refuse to allow the EIS to proceed, the notice must also state—

- (a) the reasons for the decision; and
- (b) that the proponent may, under section 50, apply to the Minister to review the decision; and
- (c) how to apply for a review.

Ministerial review of refusal to allow to proceed

50.(1) If the chief executive decides to refuse to allow the EIS to proceed, the proponent may, by written notice, apply to the Minister to review the decision.

(2) The notice must—

- (a) state why the proponent considers the EIS should be allowed to proceed; and
- (b) be given within 10 business days after the proponent receives a

notice under section 49(6) about the decision.

(3) However, the Minister may, at any time, extend the time for giving the notice.

(4) In reviewing the decision, the Minister—

- (a) has the same powers as the chief executive; and
- (b) may confirm the chief executive's decision or decide to allow the EIS to proceed under divisions 4 to 6.

(5) If the Minister decides to allow the EIS to proceed, the decision is taken for this part to be the chief executive's decision.

(6) If the Minister decides to confirm the chief executive's decision—

- (a) the decision is taken for this part, other than for section 49(6) and this section, to be the chief executive's decision; and
- (b) the chief executive must, within 10 business days after the decision is made, give the proponent written notice of the decision and the reasons for it.

Division 4—Notification stage

Subdivision 1—Public notice requirements

Public notification

51.(1) This section applies if the chief executive has given the proponent a notice, under section 49(5), that the EIS may proceed under this division and divisions 5 and 6.

(2) Within 20 business days after the giving of the notice, the proponent must—

- (a) give written notice about the EIS (the “**EIS notice**”) to—
 - (i) each affected person for the project; and
 - (ii) each interested person; and
 - (iii) any other person decided by the chief executive; and

(b) publish the EIS notice—

- (i) at least once in a newspaper circulating in the locality of the operational land; and
- (ii) in another way prescribed under a regulation or decided by the chief executive.

(3) The chief executive may decide another person for subsection (2)(a)(iii) or another way of publishing the EIS notice for subsection (2)(b)(ii) only by giving the proponent an information notice about the decision before the notice is published.

(4) This section is subject to section 68.¹³

Required content of EIS notice

52.(1) The EIS notice must be in the approved form and state the following—

- (a) a description of the project and the operational land;
- (b) where the submitted EIS may be inspected;¹⁴
- (c) where copies of, or extracts from, the submitted EIS may be obtained;¹⁵
- (d) that anyone may make a submission to the chief executive about the submitted EIS;
- (e) the period (the “**submission period**”) during which submissions may be made;
- (f) how to make a properly made submission;
- (g) another matter prescribed under a regulation.

(2) The submission period must be at least 20 business days and must end after the later of the following to end—

- (a) any submission period fixed by the chief executive under

¹³ Section 68 (Substantial compliance with notice requirements may be accepted)

¹⁴ See sections 65 (Public access to draft terms of reference or submitted EIS), 540 (Required registers) and 542 (Inspection of register).

¹⁵ See sections 540 (Required registers) and 542 (Inspection of register).

section 49(3) before the notice is published under section 51(2)(b);

- (b) 20 business days after the publication.

Declaration of compliance

53.(1) The proponent must, within 10 business days after the EIS notice is published, give the chief executive a statutory declaration declaring—

- (a) whether or not the proponent has complied with the notice requirements under sections 51 and 52; and
- (b) the name and address of each person to whom the EIS notice was given under section 51.

(2) A copy of the EIS notice must be attached to the declaration.

(3) The proponent is taken to have complied with the requirements if—

- (a) a declaration is given under this section; and
- (b) the declaration states the proponent has complied with the notice requirements.¹⁶

Subdivision 2—Submissions

Right to make submission

54. A person may, within the submission period, make a submission to the chief executive about the submitted EIS.

Acceptance of submissions

55.(1) The chief executive must accept a submission if it—

- (a) is written; and
- (b) is signed by or for each person (“**signatory**”) who made the

¹⁶ For what happens if the declaration states the requirements have not been complied with, see section 68 (Substantial compliance with notice requirements may be accepted).

submission; and

- (c) states the name and address of each signatory; and
- (d) is made to the chief executive; and
- (e) is received on or before the last day of the submission period.

(2) A submission that complies with subsection (1) is called a **“properly made submission”**.

(3) The chief executive may accept a written submission even if it is not a properly made submission.

Response to submissions

56.(1) The chief executive must, within 10 business days after the submission period ends, give the proponent a copy of all submissions accepted by the chief executive.

(2) The proponent must, within the relevant period, consider the submissions and give the chief executive—

- (a) a summary of the submissions; and
- (b) a statement of the proponent’s response to the submissions; and
- (c) any amendments of the submitted EIS because of the submissions.

(3) In this section—

“relevant period” means the later of the following periods to end—

- (a) 20 business days after the proponent is given a copy of all submissions accepted by the chief executive;
- (b) if the chief executive and the proponent have, within the 20 business days, agreed to a longer period—the longer period.

Division 5—EIS assessment report

EIS assessment report

57. The chief executive must give the proponent a report (an **“EIS**

assessment report”) about the submitted EIS—

- (a) if no EIS amendment notice is given for the EIS within 30 business days after the submission period ends—10 business days after the end of the 30 days; or
- (b) if an EIS amendment notice is given for the EIS within the 30 business days—within 30 business days after the notice is given; or
- (c) if the chief executive and the proponent have, within the 30 business days, agreed to a longer period—the longer period.¹⁷

Criteria for preparing report

58. In preparing an EIS assessment report, the chief executive must consider the following—

- (a) the final terms of reference for the EIS;
- (b) the submitted EIS;
- (c) all properly made submissions and any other submissions accepted by the chief executive;
- (d) the standard criteria;
- (e) another matter prescribed under a regulation.

Required content of report

59. An EIS assessment report must—

- (a) address the adequacy of the EIS in addressing the final terms of reference; and
- (b) address the adequacy of any environmental management plan for the project; and
- (c) make recommendations about the suitability of the project; and
- (d) recommend any conditions on which any approval required for

¹⁷ For public inspection of the EIS assessment report, see sections 540 (Required registers) and 542 (Inspection of register).

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- the project may be given; and
- (e) contain another matter prescribed under a regulation.

*Division 6—Completion of process***When process is completed**

60.(1) The process under this part is completed for an EIS when the proponent is given an EIS assessment report for the EIS.

(2) Also, the process is taken to have been completed if—

- (a) an EIS or a similar statement, however called, has been—
- (i) finalised under the Commonwealth Environment Act, section 104(1);¹⁸ or
- (ii) completed under another Commonwealth Act or a State Act; and
- (b) the chief executive decides the process under this part has been complied with, or substantially complied with, for the EIS or statement.

*Division 7—Miscellaneous provisions**Subdivision 1—Inquiries by chief executive***Application of sdiv 1**

61. This subdivision applies during—

- (a) any stage under divisions 2 to 6; and
- (b) the taking of a step or the making of a decision within any stage under divisions 2 to 6.

¹⁸ The Commonwealth Environment Act, section 104 (Finalising draft environmental impact statement)

Examples of when subdivision applies—

1. When the chief executive is preparing the final terms of reference.
2. When the proponent is preparing the EIS.
3. When the administering authority is preparing an EIS assessment report.

Chief executive may seek advice, comment or information

62.(1) The chief executive may seek and consider relevant advice, comment or information from the proponent or another person.

- (2) The request may be by public notice.

Disclosure of relevant documents or information

63. The chief executive may give anyone a document or information if it—

- (a) is mentioned in this part, required to be given to the chief executive under this part or relates to the project or to the process under this part; and
- (b) is not subject to a disclosure exemption.

Inquiry does not alter process

64. Asking for and receiving, or giving, a document or advice, comment or information under this subdivision does not—

- (a) replace any public notice or other stage or step required under divisions 2 to 6; or
- (b) extend or reduce the period required to take a step or make a decision under divisions 2 to 6.

Subdivision 2—Public inspection

Public access to draft terms of reference or submitted EIS

65. If a person asks the proponent for a copy of the draft terms of

reference for an EIS or the submitted EIS, the proponent must, on payment of the appropriate fee to the proponent, give the person the copy.¹⁹

Subdivision 3—Amending EIS

Amending EIS

66.(1) The proponent may amend or replace the submitted EIS (the “**original EIS**”)—

- (a) for an EIS for an environmental authority (mining activities) application—at any time before the chief executive gives a draft environmental authority for the application;²⁰ or
- (b) otherwise—at any time before the EIS assessment report is given to the proponent.

(2) However, the submitted EIS can not be amended during the submission period for the EIS.

(3) Also, an amendment may be made only by giving the chief executive written notice of the amendment (an “**EIS amendment notice**”).

(4) An EIS amendment notice must be accompanied by the fee prescribed under a regulation.

(5) The submitted EIS is taken to be the original EIS, as amended from time to time by an EIS amendment notice given for the original EIS.

Subdivision 4—Effects of noncompliance with process

Process is suspended

67.(1) This section applies if the proponent—

- (a) does not comply with a requirement of this part for an EIS; or
- (b) becomes entitled to take the next step under the process under this part and has not taken the step.

¹⁹ See also sections 540 (Required registers) and 542 (Inspection of register). For the appropriate fee, see section 543 (Appropriate fee for copies).

²⁰ See chapter 5, part 6, division 5 (Draft environmental authority stage).

(2) The following are suspended until the requirement is complied with or the step is taken—

- (a) the process under this part for the EIS;
- (b) any obligations of the chief executive under this part for the EIS.

(3) The proponent's draft terms of reference or submitted EIS lapse on the later of the following days if the requirement has not been complied with or the step has not been taken—

- (a) the first anniversary of the suspension;
- (b) if the chief executive and the proponent have, before the first anniversary, agreed to a later day—the later day.

(4) This section is subject to sections 47 and 68.

Substantial compliance with notice requirements may be accepted

68.(1) If the proponent has not complied with the notice requirements under division 2, subdivision 2 or division 4, subdivision 1, the chief executive must decide whether to allow the EIS to proceed under this part as if the noncompliance had not happened.

(2) The chief executive may decide to allow the EIS to proceed only if the chief executive is satisfied there has been substantial compliance with the requirements.

(3) If the chief executive decides not to allow the EIS to proceed, the chief executive must, within 10 business days after the decision is made—

- (a) fix a new period for compliance with the requirements (the “**new notice period**”); and
- (b) either fix—
 - (i) if the noncompliance was with division 2, subdivision 2—a new comment period; or
 - (ii) if the noncompliance was with division 4, subdivision 1—a new submission period; and
- (c) give the proponent an information notice about the decision not to allow the EIS to proceed and the decision about the new notice period.

(4) The information notice must state the new notice period and the new comment or submission period.

(5) The new notice period applies despite the period for giving the notice under section 43(3) or 51(2).

PART 2—VOLUNTARY PREPARATION OF EIS

Purpose of pt 2

69.(1) The purpose of this part is to allow the proponent for a project to voluntarily prepare an EIS for the project by using the process under part 1, if it is appropriate to do so.

(2) The purpose is achieved by providing for an approval process for the voluntary preparation of an EIS.

Projects that may be approved for EIS

70.(1) The proponent for a project may apply to the chief executive for approval to prepare an EIS for a project.

(2) However, an application can not be made for a project if—

- (a) an EIS requirement is in force for an application under this Act relating to the project; or
- (b) the Commonwealth Environment Act requires the project to be assessed under chapter 4, part 8 of that Act and the process under part 1 of this chapter has not been decided as an accredited process under the Commonwealth Environment Act;²¹ or
- (c) an EIS or similar statement, however called, must be prepared for the project under another State Act and that Act does not allow the EIS or statement to be prepared under part 1.

²¹ See the Commonwealth Environment Act, sections 47 (Agreement may declare classes of actions do not need assessment) and 87 (Minister must decide on approach for assessment).

Requirements for application

71. An approval application must be—

- (a) in the approved form; and
- (b) supported by enough information to allow the chief executive to decide whether an EIS is appropriate for the project; and
- (c) supported by enough documents or information to establish that the applicant may enter land to which the project relates to carry out any necessary studies for the EIS; and
- (d) accompanied by—
 - (i) the documents that, under section 41(3), must accompany a submitted draft terms of reference for an EIS; and
 - (ii) the fee prescribed under a regulation.

Deciding application

72.(1) The chief executive must consider the application and decide either to grant or refuse the approval.

(2) However, the chief executive may grant the approval only if the chief executive considers an EIS is appropriate for the project.

(3) The chief executive must, within 10 business days after the decision is made, give the proponent a written notice stating the decision, and the reasons for it.

CHAPTER 4—DEVELOPMENT APPROVALS AND ENVIRONMENTAL AUTHORITIES OTHER THAN FOR MINING ACTIVITIES

PART 1—PRELIMINARY

Application of ch 4

73. This chapter applies in relation to—

- (a) development approvals for environmentally relevant activities, other than mining activities; and
- (b) environmental authorities, other than for a mining activities.²²

Types of environmental authority under ch 4

74.(1) The following are the types of environmental authority under this chapter—

- (a) a licence for a level 1 environmentally relevant activity (a **“licence”**);
- (b) a provisional environmental authority (a **“provisional licence”**) for a level 1 environmentally relevant activity;
- (c) an approval for a level 1 environmentally relevant activity (a **“level 1 approval”**);
- (d) an approval for a level 2 environmentally relevant activity (a **“level 2 approval”**);
- (e) an integrated authority to the extent it consists of an environmental authority mentioned in paragraphs (a) to (d).

(2) A licence may be for an environmentally relevant activity for which development approval for a schedule 8 development for carrying out the activity—

- (a) is required (a **“licence (with development approval)”**); or

²² See also chapter 6 (General provisions about environmental authorities).

(b) is not required (a “**licence (without development approval)**”).

(3) A level 1 approval may be for an environmentally relevant activity for which development approval for a schedule 8 development for carrying out the activity—

(a) is required (a “**level 1 approval (with development approval)**”); or

(b) is not required (a “**level 1 approval (without development approval)**”).²³

PART 2—DEVELOPMENT APPROVALS

Division 1—Assessable development use for Integrated Planning Act

Development for Integrated Planning Act, sch 8, pt 1, item 6

75.(1) For the Integrated Planning Act, schedule 8, part 1, item 6,²⁴ a material change of use of premises for an environmentally relevant activity, other than a mining activity, is taken to be assessable development for carrying out the activity.

(2) In this section—

²³ For when development approval is required, see the Integrated Planning Act, sections 3.1.4, 3.1.5 and schedule 8 and section 76 (Additional material change of use for Integrated Planning Act) of this Act.

For level 2 approvals, see part 3, division 3 (Obtaining level 2 approval) and section 427 (Environmental authority or development approval required for level 2 environmentally relevant activity).

²⁴ Integrated Planning Act, schedule 8 (Assessable, self-assessable and exempt development), part 1 (Assessable development)

“material change of use”, of premises, means a material change of use as defined under the Integrated Planning Act.²⁵

Additional material change of use for Integrated Planning Act

76.(1) This section applies if—

- (a) the holder of an environmental authority, or development approval, for an environmentally relevant activity proposes to carry out works for the construction or alteration of premises, or for the installation or alteration of plant or equipment in premises, for carrying out the activity; and
- (b) the construction, alteration or installation will result in an increase of 10% or more in the release of contaminant into the environment under the authority or approval.

(2) The increase is—

- (a) a material change of use of the premises for the Integrated Planning Act; and
- (b) taken to be assessable development for that Act.²⁶

(3) This section does not limit section 75.

(4) In this section—

“environmental authority” does not include an environmental authority (mining activities).²⁷

²⁵ Integrated Planning Act, section 1.3.5—

“material change of use”, of premises, means—

- (a) the start of a new use of the premises; or
- (b) the re-establishment on the premises of a use that has been abandoned; or
- (c) a material change in the intensity or scale of the use of the premises.

²⁶ See the Integrated Planning Act, schedule 8 (Assessable self-assessable and exempt development), part 1, item 6 and schedule 10, definition “assessable development”.

²⁷ For an environmental authority (mining activities), see section 147 (What is a “mining activity”).

Division 2—Assessing development applications**Application of div 2**

77. This division applies if the administering authority is the assessment manager or a referral agency for an application for development approval for a schedule 8 development for carrying out an environmentally relevant activity.

Assessing development applications

78.(1) The administering authority must assess the application as if it were an application for a new environmental authority for carrying out the activity.

(2) In assessing the application, the administering authority must—

- (a) comply with any relevant EPP requirement; and
- (b) consider the standard criteria and any additional information in relation to the application.

Example of how application is assessed—

If an environmentally relevant activity is carried out on premises and a development application is made because of a proposed intensification of the activity, the application is assessed on the basis of the activity as intensified.

(3) However, for complying with an EPP requirement to follow a stated procedure in evaluating an environmental authority application, the administering authority is required to comply with the requirement only to the extent it is not inconsistent with a period allowed or required for doing anything under the Integrated Planning Act, chapter 3.

(4) To remove any doubt it is declared that subsections (1) and (2) apply only to the extent the application relates to the environmentally relevant activity.

(5) This section does not limit the Integrated Planning Act, section 3.3.15 or chapter 3, part 5, division 2²⁸ of that Act.

²⁸ Integrated Planning Act, chapter 3 (Integrated development assessment system (IDAS)), chapter 3, part 5, division 2 (Assessment process) and section 3.5.15 (Decision notice)

Conditions of development approval

79.(1) In deciding conditions of a development approval, sections 91 and 92 apply, with necessary changes, as if the application for the approval were an application for a new environmental authority for carrying out the activity.

(2) Subsection (1) is subject to the Integrated Planning Act, section 3.5.30.²⁹

Division 3—Effect of issue of certain development approvals**Development approvals continue to have effect**

80.(1) This section applies if—

- (a) the development to which this part applies is a material change in the intensity or scale of the use of premises under the Integrated Planning Act; and
- (b) the development application for the development is made by or for the holder of 1 or more environmental authorities for 1 or more environmentally relevant activities; and
- (c) a development approval takes effect for carrying out the activity or activities to which the permit relates.

(2) The environmental authority or authorities are cancelled to the extent they authorise the carrying out of the activity or activities to which the permit relates.

(3) Also, if the currency period under the Integrated Planning Act for the permit ends, the permit continues to have effect for this Act subject to the development conditions applying to the carrying out of the activity or activities to which the permit relates immediately before the period ends.

²⁹ Sections 91 (Criteria for decision) and 92 (Conditions that may be imposed). Integrated Planning Act, section 3.5.30 (Conditions must be relevant or reasonable). See also the Integrated Planning Act, sections 3.3.18 (Concurrence agency's response powers) and 3.3.19 (Advice agency's response powers).

(4) Subsection (3) applies despite section 3.5.21 of the Integrated Planning Act.³⁰

PART 3—ENVIRONMENTAL AUTHORITY APPLICATIONS

Division 1—Obtaining licence (with development approval)

Operation of div 1

81. This division provides the process to obtain, by application, a licence (with development approval).³¹

Requirements for application

82. The application must be—

- (a) made to the administering authority in the approved form; and
- (b) supported by enough information to allow the authority to decide the application; and
- (c) accompanied by the prescribed fee that, under a regulation, must accompany the application.

Deciding application

83. The administering authority must, within 28 days after the application date, consider the application and decide whether to grant or refuse it.

³⁰ Integrated Planning Act, section 3.5.21 (When approval lapses)

³¹ For how to obtain a level 1 approval see part 4 (Conversion of licence to level 1 approval).
For level 2 environmentally relevant activities carried out under a development approval, see section 427 (Environmental authority or development approval required for level 2 environmentally relevant activity).

Criteria for decision

84. In deciding whether to grant or refuse the application, the administering authority must consider the following—

- (a) additional information given in relation to the application;
- (b) any suitability report obtained for the application;
- (c) any IEMS submission for the activity.

Conditions that may be imposed

85.(1) The administering authority may only impose conditions on the licence—

- (a) about the integrated environmental management system for the activity; or
- (b) requiring the giving of financial assurance under section 364.³²

(2) To remove any doubt, it is declared that a condition may be imposed even if it imposes an obligation on the licence holder that continues to apply after the licence has ended or ceased to have effect.

Steps after granting application

86.(1) If the administering authority decides to grant the application, it must take the steps mentioned in subsection (2)—

- (a) if, under a regulation, the application fee, or part of the fee, is not required to accompany the application, within 10 days after the later of—
 - (i) the day the decision is made; or
 - (ii) payment of the application fee or part of the fee; or
- (b) otherwise—within 10 days after the decision is made.

(2) For subsection (1), the steps are as follows—

- (a) issue the licence in the approved form;

³² Section 364 (When financial assurance may be required)

- (b) insert it in the appropriate register;
- (c) give the applicant a copy of the licence.

Division 2—Obtaining licence (without development approval)

Subdivision 1—General provisions for obtaining licence

Operation of sdiv 1

87. This subdivision provides the process to obtain, by application, a licence (without development approval).

Definition for sdiv 1

88. In this subdivision—

“**person**” includes a body of persons, whether incorporated or unincorporated.

Requirements for application

89. The application must be—

- (a) made to the administering authority in the approved form; and
- (b) supported by enough information to allow the authority to decide the application, including, for example—
 - (i) relevant information about the likely risks to the environment; and
 - (ii) details of wastes to be generated; and
 - (iii) any waste minimisation strategy; and
- (c) accompanied by the prescribed fee that, under a regulation, must accompany the application.

Deciding application

90. Subject to section 94, the administering authority must, within the later of the following periods to end, consider and decide whether to grant or refuse the application—

- (a) 28 days after the application date.³³

Criteria for decision

91. In deciding whether to grant or refuse the application, the administering authority—

- (a) must comply with any relevant EPP requirement; and
- (b) subject to paragraph (a), must consider the following—
 - (i) the standard criteria;
 - (ii) additional information given in relation to the application;
 - (iii) any suitability report obtained for the application;
 - (iv) the views expressed at a conference held in relation to the application.

Conditions that may and must be imposed

92.(1) The administering authority may impose the conditions on the licence it considers are necessary or desirable.

(2) The conditions must include any condition the authority is required to impose under an EPP requirement.

(3) Without limiting subsections (1) and (2), the conditions may—

- (a) require the licence holder to do all or any of the following—
 - (i) install and operate stated plant or equipment in a stated way within a stated period;
 - (ii) take stated measures to minimise the likelihood of environmental harm being caused;

³³ This section has uncommenced amendments—see endnote 10.

- (iii) carry out and report on a stated monitoring program;
 - (iv) prepare and carry out an environmental management program;
 - (v) give relevant information reasonably required by the administering authority for the administration or enforcement of this Act;
 - (vi) carry out or report about stated rehabilitation or remediation work relating to the environmentally relevant activity the subject of the licence; or
- (b) prohibit the holder from changing, replacing or operating any plant or equipment installed in the licensed place if the change, replacement or operation increases, or is likely to substantially increase, the risk of environmental harm; or
- (c) include a condition under section 364³⁴ requiring the giving of financial assurance.

(4) To remove any doubt, it is declared that a condition may be imposed even if it imposes an obligation on the licence holder that continues to apply after the licence has ended or ceased to have effect.

Example for subsection (4)—

A condition may—

1. Be about rehabilitation of the land to which the licence relates after the licence has ended; or
2. Require a site management plan for the land.

Steps after granting application

93.(1) If the administering authority decides to grant the application, it must take the steps mentioned in subsection (2)—

- (a) if, under a regulation, the application fee, or part of the fee, is not required to accompany the application, within 10 days after the later of—
 - (i) the day the decision is made; or

³⁴ Section 364 (When financial assurance may be required)

- (ii) payment of the application fee or part of the fee; or
 - (b) otherwise—within 10 days after the decision is made.
- (2) For subsection (1), the steps are—
- (a) issue the licence in the approved form; and
 - (b) insert it in the appropriate register; and
 - (c) give the applicant a copy of the licence.

Subdivision 2—Provisional licences

When provisional licence may be issued

94.(1) This section applies within the period required for deciding a licence application under subdivision 1 if the licence applied for has not been issued.

(2) If the administering authority considers the applicant can not give enough information about the licence application to allow it to decide the application, it may, instead of issuing the licence, issue a provisional licence if—

- (a) the authority is satisfied the applicant will be able to comply with all relevant environmental protection policies; and
- (b) the applicant has given the authority a written undertaking to comply with the policies.

(3) However, the authority must not issue more than 1 provisional licence for the same environmentally relevant activity carried out at the same place.

(4) The authority may impose conditions on a provisional licence that, under section 92, may be imposed on a licence.

(5) The information that, under subsection (2), the authority considers the applicant can not give is called the “**missing information**” for the provisional licence.

Steps after decision to grant provisional licence

95. If the administering authority decides to issue a provisional licence, it must within 10 days—

- (a) issue the provisional licence in the approved form; and
- (b) insert it in the appropriate register; and
- (c) give the applicant—
 - (i) a copy of the provisional licence; and
 - (ii) a written notice stating the missing information for the provisional licence.

Term of provisional licence

96. A provisional licence—

- (a) takes effect on the later of the following—
 - (i) the day stated in it; and³⁵
- (b) remains in force until—
 - (i) the fifth anniversary of the day it was issued; or
 - (ii) if an earlier day is stated in the provisional licence for it to expire—the earlier day.

Reminder notices

97.(1) The administering authority must, at least 30 days before a provisional licence expires, give the licence holder a notice.

(2) The notice must state—

- (a) the day the provisional licence expires; and
- (b) that the holder of the provisional licence may, under section 98, apply for a new licence for the environmentally relevant activity for which the provisional licence was issued; and
- (c) the missing information for the provisional licence.

³⁵ This section has uncommenced amendments—see endnote 10.

(3) A contravention of this section does not affect the expiry of the provisional licence.

Application for new licence

98.(1) The holder of a provisional licence may apply to the administering authority to—

- (a) cancel the provisional licence; and
- (b) issue a new licence for the environmentally relevant activity for which the provisional licence was issued.

(2) The application must be—

- (a) in the approved form; and
- (b) made before the provisional licence expires; and
- (c) supported by the missing information for the provisional licence; and
- (d) accompanied by the prescribed fee that, under a regulation, must accompany the application.

(3) Subdivision 1 applies to the application, with necessary changes, as if the application were a licence application.

(4) If the authority issues the new licence, it must cancel the provisional licence.

Division 3—Obtaining level 2 approval

Operation of div 3

99. This division provides the process to obtain, by application, a level 2 approval.³⁶

³⁶ See section 427 (Environmental authority or development approval required for level 2 environmentally relevant activity).

Requirements for application

100. The application must be—

- (a) made to the administering authority in the approved form; and
- (b) supported by enough information to allow the authority to decide the application, including, for example—
 - (i) relevant information about the likely risks to the environment; and
 - (ii) details of wastes to be generated; and
 - (iii) any waste minimisation strategy; and
- (c) accompanied by the prescribed fee that, under a regulation, must accompany the application.

Deciding application

101. The administering authority must, within 28 days after the application date, consider and decide whether to grant or refuse the application.

Criteria for decision

102. In deciding whether to grant or refuse the application, the administering authority—

- (a) must comply with any relevant EPP requirement; and
- (b) subject to paragraph (a), must consider the following—
 - (i) the standard criteria;
 - (ii) additional information given in relation to the application;
 - (iii) any suitability report obtained for the application.

Conditions that may and must be imposed

103.(1) The administering authority may impose the conditions on the level 2 approval it considers are necessary or desirable.

(2) The conditions must include any condition the authority is required to

impose under an EPP requirement.

(3) Without limiting subsections (1) and (2), the conditions may require the licence holder to take stated measures to minimise the likelihood of environmental harm being caused.

(4) To remove any doubt, it is declared that a condition may be imposed even if it imposes an obligation on the approval holder that continues to apply after the approval has ended or ceased to have effect.

Example for subsection (4)—

A condition may—

1. Be about rehabilitation of the land to which the approval relates after the approval has ended; or
2. Require a site management plan for the land.

Steps after granting application

104.(1) If the administering authority decides to grant the application, it must take the steps mentioned in subsection (2)—

- (a) if, under a regulation, the application fee, or part of the fee, is not required to accompany the application, within 10 days after the later of—
 - (i) the day the decision is made; or
 - (ii) payment of the application fee or part of the fee; or
- (b) otherwise—within 10 days after the decision is made.

(2) For subsection (1), the steps are—

- (a) issue the level 2 approval in the approved form; and
- (b) insert it in the appropriate register; and
- (c) give the applicant a copy of the approval.

(3) The approval must state a period for which it is issued.

Division 4—Miscellaneous provisions**When environmental authorities under pt 3 take effect**

105. An environmental authority, other than a provisional licence, granted under this part takes effect on the later of the following—

- (a) the day of its issue;
- (b) a later day stated in it;
- (c) on the happening of an event stated in the authority for it to take effect.

Term of environmental authority

106.(1) A licence continues in force unless it is—

- (a) surrendered under section 128; or
- (b) converted into a level 1 approval following the grant of a conversion application for the licence; or
- (c) cancelled or suspended under part 7.³⁷

(2) A level 1 approval continues in force unless it is cancelled or suspended under part 7.

(3) A level 2 approval continues in force for the period stated in it.

Information notice about decision on application

107. The administering authority must, within 10 days after making a decision to do the following for an application under this part for an environmental authority, give the applicant and any submitter for the application an information notice about the decision—

- (a) to refuse the application;
- (b) to impose a condition on the environmental authority, other than a

³⁷ Section 128 (Surrender of licence)

Part 7 (Amendment, cancellation or suspension of environmental authorities by administering authority)

condition that is the same, or is to the same effect, as a condition agreed to or requested by the applicant.

PART 4—CONVERSION OF LICENCE TO LEVEL 1 APPROVAL

Division 1—Conversion applications

When conversion application may be made

108. The holder of a licence, other than a provisional licence, may apply to convert the licence to a level 1 approval for the activity (a “**conversion application**”) only if the holder—

- (a) has held the licence for 2 years or more; and
- (b) has, in the 2 years immediately before the application is made; complied with—
 - (i) the conditions of the licence; and
 - (ii) if the licence is a licence (with development approval)—the development conditions of the development approval for the licensed activity; and
- (c) is not the holder of an environmental management program approval for the activity; and
- (d) is not subject to an environmental protection order in carrying out the activity.

Requirements for application

109. A conversion application must be—

- (a) made to the administering authority in the approved form; and
- (b) supported by enough information to allow the authority to decide the application, including, for example—

- (i) relevant information about the likely risks to the environment; and
- (ii) details of wastes to be generated; and
- (iii) any waste minimisation strategy.

Division 2—Processing conversion applications

Deciding application

110. The administering authority must consider each conversion application and decide whether to grant or refuse it within 28 days after the application date.

Criteria for decision

111.(1) The administering authority may grant a conversion application only if it is satisfied the risk of environmental harm from the activity is insignificant because—

- (a) of any applicable cleaner production techniques used by the applicant; and
- (b) of any applicable waste minimisation practices used by the applicant; and
- (c) of contingency plans the applicant has developed to manage abnormal or emergency situations that may arise in carrying out the activity; and
- (d) the applicant's implementation of best practice environmental management techniques has resulted in levels of environmental protection over and above the levels required by—
 - (i) the conditions of the licence; and
 - (ii) if the licence is a licence (with development approval)—the development conditions of the development approval for the licensed activity; and
- (e) of the applicant's compliance with the general environmental duty.

(2) Also, if the application relates to a licence (without development approval), in deciding whether to grant or refuse the application, the authority—

- (a) must comply with any relevant EPP requirement; and
- (b) subject to paragraph (a), must consider the following—
 - (i) the standard criteria;
 - (ii) additional information given in relation to the application;
 - (iii) any suitability report obtained for the application;
 - (iv) the views expressed at a conference held in relation to the application.

Conditions of converted environmental authority

112.(1) If a conversion application is granted, the conditions of the licence become, with necessary changes, conditions of the level 1 approval.

(2) The administering authority must also impose a condition on the approval if, under an EPP requirement, it must be imposed on the approval.

(3) The authority may impose another condition on the approval only if—

- (a) for an application relating to a licence (with development approval)—the condition is about the integrated environmental management system for the environmentally relevant activity to which the approval relates; or
- (b) for an application relating to a licence (without development approval)—the condition is no more stringent than the conditions of the licence.

Steps after granting application

113. If the administering authority decides to grant a conversion application, it must, within 10 days after the decision is made, take the following steps—

- (a) cancel the licence;

- (b) issue the level 1 approval in the approved form;
- (c) insert it in the appropriate register;
- (d) give the applicant a copy of the approval.

When conversion takes effect

114. The conversion of a licence to a level 1 approval under this part takes effect on the later of the following—

- (a) the day the licence is cancelled;
- (b) the day the approval is issued;
- (c) a later day stated in the approval;
- (d) on the happening of an event stated in the approval for it to take effect.

Information notice about decision on conversion application

115. The administering authority must, within 10 days after making a decision as follows, give the applicant an information notice about the decision—

- (a) a decision to refuse a conversion application;
- (b) a decision under section 112(3) to impose a condition on a level 1 approval, other than a condition that is the same, or is to the same effect, as a condition agreed to or requested by the applicant.

PART 5—AMENDING ENVIRONMENTAL AUTHORITIES BY APPLICATION

Environmental authorities that may be amended by application

116.(1) The holder of an environmental authority as follows may apply to the administering authority to amend it (an “**amendment**”

application”)—

- (a) a licence (without development approval);
 - (b) a level 1 approval (without development approval).
- (2)** The following can not be amended, other than under part 7—
- (a) a licence (with development approval);
 - (b) a level 1 approval (with development approval);
 - (c) a level 2 approval.

Requirements for amendment application

117. An amendment application must be—

- (a) in the approved form; and
- (b) supported by enough information to allow the administering authority to decide the application; and
- (c) accompanied by the fee prescribed under a regulation.

Deciding application

118. The administering authority must consider and decide either to grant or refuse each amendment application within the later of the following—

- (a) 28 days after the application date.³⁸

Criteria for decision

119.(1) If an amendment application relates to a licence, the criteria mentioned in section 91 for deciding an environmental authority application apply.

(2) If an amendment application relates to a level 1 approval, in deciding whether to grant or refuse the application, the administering authority must consider the standard criteria.

³⁸ This section has uncommenced amendments—see endnote 10.

Decision on application

120. The administering authority may grant an amendment application if it is satisfied the amendment is necessary or desirable.

Steps after making decision

121.(1) If the administering authority decides to grant an amendment application, it must do the following within 10 days after the decision is made—

- (a) amend the licence or level 1 approval to give effect to the amendment;
- (b) record particulars of the amendment in the appropriate register;
- (c) give the applicant a copy of the amended licence or level 1 approval.

(2) If the authority decides to refuse an amendment application, it must within 10 days after the decision is made, give the applicant for the application an information notice about the decision.

When amendment takes effect

122. An amendment made under section 121(1)(a) takes effect on the later of the following—

- (a) the day the amendment is made;
- (b) a later day stated in the amended licence or level 1 approval;
- (c) another day agreed to by the holder of the licence or level 1 approval.

PART 6—DEALINGS WITH LICENCES

Division 1—Required notice to proposed transferee

Notice of disposal by licence holder

123.(1) This section applies if a licence holder proposes to dispose of the holder's business to someone else (the "**proposed transferee**").

(2) Before agreeing to dispose of the business, the holder must give the proposed transferee written notice that the proposed transferee must make application under division 2 for the transfer of the licence or for a new licence.

Maximum penalty—50 penalty units.

(3) If the holder does not comply with subsection (2), the proposed transferee may rescind the agreement by written notice given to the holder before the completion of the agreement or possession under the agreement, whichever is the earlier.

(4) On rescission of the agreement under subsection (3)—

- (a) a person who was paid amounts by the proposed transferee under the agreement must refund the amounts to the proposed transferee; and
- (b) the proposed transferee must return to the holder any documents about the disposal, other than the proposed transferee's copy of the agreement.

(5) Subsections (3) and (4) have effect despite any other Act or anything to the contrary in the agreement.

Division 2—Transfer of licences (without development approval)

Transfer only by approval

124. A licence (without development approval) may be transferred only if—

- (a) an application for the transfer has been made under this division (a “**transfer application**”); and
- (b) the administering authority has approved the transfer.³⁹

Requirements for transfer application

125. A transfer application must be—

- (a) made to the administering authority by the proposed transferee in the approved form; and
- (b) supported by enough information to allow the authority to decide the application; and
- (c) accompanied by the fee prescribed under a regulation.

Deciding application

126. The administering authority must, within 28 days after the application date, consider each transfer application and decide either to approve or refuse the transfer.

Steps after making decision

127.(1) If the administering authority decides to approve a transfer, it must, within 10 days after the decision is made—

- (a) amend the licence to give effect to the transfer; and
- (b) record particulars of the transfer in the appropriate register; and
- (c) give the applicant a copy of the transferred licence.

(2) The transfer takes effect on the day the decision is made or a later day stated in the transferred licence.

(3) If the authority decides to refuse a transfer, it must, within 10 days after the decision is made, give the applicant an information notice about the decision.

³⁹ For approvals, see section 143 (No dealings with licence (with development approval) or approval)).

Division 3—Surrender of licences (without development approval)**Surrender of licence**

128.(1) The holder of a licence (without development approval) may surrender it only by written notice given to the administering authority.

(2) The surrender takes effect on the later of the following—

- (a) the day the notice is given;
- (b) a later day stated in the notice.

**PART 7—AMENDMENT, CANCELLATION OR
SUSPENSION OF ENVIRONMENTAL AUTHORITIES
BY ADMINISTERING AUTHORITY*****Division 1—Conditions for amendment, cancellation or suspension******Subdivision 1—Amendments*****Corrections**

129. The administering authority may amend an environmental authority under this chapter, at any time to correct a clerical or formal error (a “**correction**”) if—

- (a) the proposed amendment does not adversely affect the interests of the environmental authority holder or anyone else; and
- (b) written notice of the amendment has been given to the holder.

Other amendments

130.(1) The administering authority may amend an environmental authority under this chapter, other than a licence (with development approval) or a level 2 approval, at any time if—

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- (a) the holder has agreed in writing to the amendment; or
- (b) it considers the amendment necessary or desirable because of a ground mentioned in subsection (2) and—
 - (i) if the amendment relates to a condition of the environmental authority—the amended condition is a condition that may be imposed on the environmental authority; and
 - (ii) the procedure under division 2 is followed.

(2) For subsection (1)(b), the grounds are that the authority considers the amendment necessary or desirable because of any of the following—

- (a) a contravention of this Act by the holder;
- (b) the environmental authority was issued because of a materially false or misleading representation or declaration, made either orally or in writing;
- (c) the environmental authority was issued on the basis of a miscalculation of—
 - (i) the quantity or quality of contaminant authorised to be released into the environment; or
 - (ii) the effects of the release of a quantity or quality of contaminant authorised to be released into the environment;
- (d) a change in the way in which, or the place where, contaminants are, or are likely to be, released into the environment;
- (e) the approval of an environmental protection policy or the approval of the amendment of an environmental protection policy;
- (f) an environmental report;
- (g) if the environmental authority is for a level 1 approval—the administering authority forms the opinion that the risk of environmental harm from an activity carried out under the approval is no longer insignificant;
- (h) another circumstance prescribed under a regulation.

Subdivision 2—Cancellation or suspension**Conditions**

131.(1) The administering authority may cancel or suspend an environmental authority under this chapter, other than a level 2 approval, if—

- (a) an event mentioned in subsection (3) has happened; and
- (b) the procedure under division 2 is followed.

(2) If the environmental authority is a level 1 approval, the administering authority may also cancel the approval and issue a licence in its place.

(3) For subsection (1)(a), the events are as follows—

- (a) the environmental authority was issued because of a materially false or misleading representation or declaration, made either orally or in writing;
- (b) if the environmental authority is for a level 1 approval—the administering authority forms the opinion that the risk of environmental harm from an activity carried out under the approval is no longer insignificant;
- (c) the environmental authority holder is, after the issue of the environmental authority, convicted of an environmental offence;
- (d) the holder has been given an annual notice and the notice has not been complied with.

Division 2—Procedure for amendment without agreement, cancellation or suspension**Application of div 2**

132. This division applies if the administering authority proposes to—

- (a) amend an environmental authority, other than—
 - (i) to make a correction; or
 - (ii) with the written agreement of the environmental authority

holder; or

- (b) cancel or suspend an environmental authority.

Notice of proposed action

133.(1) The administering authority must give the environmental authority holder a written notice stating the following—

- (a) the action (the “**proposed action**”) the administering authority proposes taking under this division;
- (b) the grounds for the proposed action;
- (c) the facts and circumstances that are the basis for the grounds;
- (d) if the proposed action is to amend the environmental authority—the proposed amendment;
- (e) if the proposed action is to suspend the environmental authority—the proposed suspension period;
- (f) that the holder may make, within a stated period, written representations to show why the proposed action should not be taken.

(2) The stated period must end at least 30 days after the holder is given the proposed action notice.

(3) For subsection (1)(e), the proposed suspension period may be fixed by reference to a stated event.

Example for subsection (3)—

If a ground on which the proposed action is to be taken is that financial assurance required under a condition of the environmental authority has not been given, the proposed suspension period may be stated as the period ending when the financial assurance is given.

Considering representations

134. The administering authority must consider any written representation made within the period stated in the notice under section 133 by the environmental authority holder.

Decision on proposed action

135.(1) If, after complying with section 134, the administering authority still believes a ground exists to take the proposed action, it may—

- (a) if the proposed action was to amend the environmental authority in a stated way—make the amendment; or
- (b) if the proposed action was to suspend the environmental authority for a stated period—suspend the environmental authority for no longer than the proposed suspension period; or
- (c) if the proposed action was to cancel the environmental authority—
 - (i) cancel the environmental authority; or
 - (ii) suspend it for a fixed period; or
 - (iii) if the environmental authority is a level 1 approval (with development approval)—cancel the approval and issue a licence in its place subject to conditions that may be imposed on a licence (with development approval); or
 - (iv) if the environmental authority is a level 1 approval (without development approval), cancel the approval and issue a licence in its place subject to conditions—
 - (A) required, under an EPP requirement, to be imposed on a licence (without development approval); and
 - (B) the administering authority considers necessary or desirable.

(2) The decision under subsection (1) is called the “**proposed action decision**”.

(3) If the administering authority at any time decides not to take the proposed action, it must promptly give the holder written notice of the decision.

Notice of proposed action decision

136.(1) The administering authority must, within 10 days after making the proposed action decision, give the environmental authority holder—

- (a) an information notice about the decision; and

(b) if the decision was to cancel the approval and issue a licence in its place—a copy of the licence.

(2) The decision takes effect on the later of the following—

(a) the day the notice is given to the holder;

(b) a later day of effect stated in the notice;

(c) if the decision was to cancel the approval and issue a licence in its place—the day after the review date.

(3) However, if the decision was to cancel or suspend the environmental authority because of the conviction of the holder for an offence, the cancellation or suspension—

(a) does not take effect until—

(i) the period to appeal against the conviction ends; and

(ii) if the appeal is made against the conviction—the appeal is finally decided or is otherwise ended; and

(b) has no effect if the conviction is quashed on appeal.

Division 3—Steps after making decision

Steps for corrections

137. If the administering authority amends an environmental authority to make a correction, it must within 10 days after giving notice of the correction under section 129(b)—

(a) amend the environmental authority to give effect to the amendment; and

(b) record particulars of the amendment in the appropriate register.

Steps for amendment by agreement

138. If the administering authority amends an environmental authority with the environmental authority holder's agreement, it must within 10 days—

(a) amend the environmental authority to give effect to the

- amendment; and
- (b) record particulars of the amendment in the appropriate register; and
- (c) give the holder a copy of the amended environmental authority.

Steps for amendment without agreement or for cancellation or suspension

139.(1) This section applies if the proposed action decision is to take action and the decision has taken effect.

(2) The administering authority must, within 10 days—

- (a) take the action; and
- (b) record particulars of the action in the appropriate register.

(3) If the action is suspension of the environmental authority—

- (a) the particulars must state when the suspension period starts and ends; and
- (b) the suspension ends when the suspension period is stated to end.

(4) If the action is to amend the environmental authority, the administering authority must also give the environmental authority holder a copy of the amended environmental authority as soon as practicable.

PART 8—MISCELLANEOUS PROVISIONS

Environmental authorities for new environmentally relevant activities

140.(1) This section applies if—

- (a) an activity, other than a mining activity, first becomes an environmentally relevant activity, on or after the commencement of this section; and
- (b) immediately before the activity became an environmentally relevant activity, a person was carrying out the activity; and

- (c) within 4 months after the day the activity becomes an environmentally relevant activity, the person applies for an environmental authority for the activity.

(2) Sections 426 and 427 do not apply to the person until—

- (a) if the application is granted—the day the environmental authority issued to the person for the activity takes effect; or
- (b) if the application is refused—the day after notice of the decision to refuse it is given to the applicant; or
- (c) if, under section 141, the application is taken to have been refused—the end of the period within which it was required to be decided.

(3) Despite section 90(1), the administering authority must decide the application within 3 months after the application date.

(4) For this section, an activity does not first become an environmentally relevant activity on a day if, immediately before the day, an environmental authority could be issued to a person for the activity.⁴⁰

Failure to decide application taken to be refusal

141. If the administering authority fails to decide an application under this chapter within the period it is required to decide the application, the failure is taken to be a decision by the authority to refuse the application at the end of the period.

Grounds for refusing application for or to transfer environmental authority

142.(1) This section applies if the administering authority is considering an application for, or to transfer, an environmental authority under this chapter.

(2) The administering authority may refuse the application—

⁴⁰ Sections 426 (Environmental authority required for level 1 environmentally relevant activity), 427 (Environmental authority or development approval required for level 2 environmentally relevant activity), 141 (Failure to decide application taken to be refusal) and 90 (Deciding application)

- (a) if it is satisfied the proposed holder is not a suitable person to hold an environmental authority; or
- (b) if a disqualifying event has happened in relation to the proposed holder or another person of whom the person is a partner; or
- (c) if the proposed holder is a corporation, a disqualifying event has happened in relation to—
 - (i) any of its executive officers; or
 - (ii) another corporation of which any of its executive officers is, or has been, an executive officer.

(3) In deciding whether a proposed holder is suitable person to hold an environmental authority, the administering authority must consider all relevant matters, including, for example—

- (a) the proposed holder's environmental record; and
- (b) the proposed holder's ability to comply with any conditions or proposed conditions of the environmental authority or proposed environmental authority.⁴¹

No dealings with licence (with development approval) or approval

143. A licence (with development approval) or a level 1 or 2 approval can not be surrendered or transferred.

Notice of ceasing activity under certain environmental authorities

144.(1) This section applies to the holder of licence or level 1 approval (with development approval).

(2) The holder must, within 14 days after ceasing an environmentally relevant activity to which the licence or approval relates, give the administering authority written notice of the ceasing of the activity.

Maximum penalty for subsection (2)—50 penalty units.

⁴¹ See chapter 12, part 2, division 3 (Investigating suitability).

Death of licence holder

145.(1) If a licence holder dies, the personal representative of the holder's estate is taken to be the holder of the licence for—

- (a) 6 months from the day of the holder's death; or
- (b) any longer period the administering authority decides, on written application made by the personal representative made within the 6 months.

(2) The authority must, within 10 business days after it receives the application, consider the application and decide whether to grant or refuse it.

(3) If the authority decides to refuse the application, it must, within 10 business days after making the decision, give the applicant an information notice about the decision.

CHAPTER 5—ENVIRONMENTAL AUTHORITIES FOR MINING ACTIVITIES

PART 1—PRELIMINARY

Division 1—Introduction

Purpose of ch 5

146.(1) The purpose of this chapter is to provide for environmental authorities for mining activities.⁴²

(2) An authority issued under this chapter for a mining activity is called an “**environmental authority (mining activities)**”.

⁴² See also chapter 6 (General provisions about environmental authorities).

Division 2—Key definitions for ch 5**What is a “mining activity”**

147.(1) A “**mining activity**” means an activity mentioned in subsection (2) that, under the Mineral Resources Act, is authorised to take place on—

- (a) land to which a mining tenement relates; or
- (b) land authorised under that Act for access to land mentioned in paragraph (a).

(2) For subsection (1), the activities are as follows—

- (a) prospecting, exploring or mining under the Mineral Resources Act or another Act relating to mining;
- (b) processing a mineral won or extracted by an activity under paragraph (a);
- (c) an activity that—
 - (i) is directly associated with, or facilitates or supports, an activity mentioned in paragraph (a) or (b); and
 - (ii) may cause environmental harm;
- (d) rehabilitating or remediating environmental harm because of a mining activity under paragraphs (a) to (c);
- (e) action taken to prevent environmental harm because of an activity mentioned in paragraphs (a) to (d);
- (f) any other activity prescribed for this subsection under a regulation.

Types of “environmental authority (mining activities)”

148. An environmental authority (mining activities) may be for mining activities authorised under—

- (a) a prospecting permit (an “**environmental authority (prospecting)**”); or

- (b) a mining claim (an “**environmental authority (mining claim)**”);
or
- (c) an exploration permit (an “**environmental authority (exploration)**”); or
- (d) a mineral development licence (an “**environmental authority (mineral development)**”); or
- (e) a mining lease (an “**environmental authority (mining lease)**”).⁴³

What is a “mining project”

149. A “**mining project**” means all mining activities carried out, or proposed to be carried out, under 1 or more mining tenements, in any combination, as a single integrated operation.

What are “application documents”

150. The “**application documents**” for an environmental authority (mining activities) application are all of the following—

- (a) the application;
- (b) any draft environmental authority for the application;
- (c) any submitted environmental management document for the application;
- (d) any EM plan assessment report or EMOS assessment report for the application;
- (e) any EIS submitted under chapter 3, part 1⁴⁴ for a project that is, or includes, a relevant mining activity for the application;
- (f) if an EIS mentioned in paragraph (e) has been submitted—
 - (i) any response under section 56(2)(b) to submissions; and
 - (ii) the EIS assessment report;

⁴³ See also section 155 (Single application required for mining project).

⁴⁴ Chapter 3, part 1 (EIS process)

- (g) if a relevant mining tenement has, under the State Development Act, part 4, been declared to be, or include, a significant project—
 - (i) the EIS prepared under that part for the project; and
 - (ii) the coordinator-general's report under section 29K of that Act⁴⁵ evaluating the EIS;
- (h) any assessment report under the Commonwealth Environment Act that is for, or includes, a relevant mining activity;
- (i) any other document relating to the application prescribed under a regulation.

Division 3—Standard mining activities

Standard mining activities

151.(1) The administering authority may decide that a mining activity or proposed mining activity is a standard mining activity.

(2) However, a mining activity or proposed mining activity may be decided to be a standard mining activity only if the authority considers—

- (a) the activity has, or will if carried out have, a low risk of serious environmental harm; and
- (b) the activity is, or is proposed to be, allowed under an environmental authority; and
- (c) either—
 - (i) the environmental authority is an environmental authority (prospecting) or an environmental authority (mining claim); or
 - (ii) all mining activities allowed, or to be allowed, under the environmental authority meet the criteria prescribed under a regulation for that type of environmental authority; or

⁴⁵ State Development Act, part 4 (Environmental coordination) and section 29K (Coordinator-General evaluates EIS, submissions, other material and prepares report)

- (iii) the likely environmental impact of all mining activities allowed, or to be allowed, under the environmental authority is no more than the environmental impact of all activities allowed under any environmental authority of the same type that meets the prescribed criteria.

PART 2—GENERAL PROVISIONS FOR OBTAINING ENVIRONMENTAL AUTHORITY (MINING ACTIVITIES)

Division 1—Introduction

Outline of process to obtain environmental authority (mining activities)

152.(1) This section outlines the requirements for making an environmental authority (mining activities) application.

(2) Before an application for any of the following is decided, an assessment level decision under division 3 is required—

- (a) an environmental authority (exploration);
- (b) an environmental authority (mineral development);
- (c) an environmental authority (mining lease).

(3) The following parts provide the process for assessing an application—

- (a) for an environmental authority (prospecting)—part 3;
- (b) for an environmental authority (mining claim)—part 4;
- (c) for an environmental authority (exploration) or an environmental authority (mineral development)—part 5;

Environmental Protection Act 1994

(d) for an environmental authority (mining lease)—part 6.⁴⁶

(4) The following table summarises the main steps required under the provisions mentioned in subsections (2) and (3) and identifies the relevant sections for the steps⁴⁷—

Type of environmental authority (mining activities)	Assessment level decision required	Additional conditions allowed for standard application	Can an EIS requirement be made		Environmental management plan (“EMP”) or EMOS required		Public notification requirement and objections
			Standard application	Non-standard application	Standard application	Non-standard application	
environmental authority (prospecting)	no s 161	no s 170(3)	no	no	no	no	no
environmental authority (mining claim)	no s 161	yes s 176	no	no	no	no	yes s 177
environmental authority (exploration)	yes s 161	yes s 180	no	yes s 164	no	EMP s 187	no
environmental authority (mineral development)	yes s 161	yes s 180	no	yes s 164	no	EMP s 187	no
environmental authority (mining lease)	yes s 161	yes s 209(3)	no	yes s 164	no	EMOS s 201	yes s 211 & s 216

⁴⁶ Division 3 (Assessment level decision for certain applications) Parts 3 (Processing environmental authority (Prospecting) applications), 4 (Processing environmental authority (Mining claim) applications) and 5 (Processing environmental authority (Exploration) and environmental authority (Mineral development) applications)

⁴⁷ Section 197 (Summary of pt 6 process) also gives a summary of the process for assessing an environmental authority (mining lease) application.

Division 2—Applications***Subdivision 1—General provisions about applications*****Who may apply**

153.(1) A person may apply for an environmental authority (mining activities) only if the person is the holder of, or the applicant for, a relevant mining tenement.⁴⁸

(2) This section is subject to section 156.

General requirements for application

154.(1) An environmental authority (mining activities) application must—

- (a) be made to the mining registrar in the approved form; and
- (b) state whether the application is for—
 - (i) a standard environmental authority (mining activities); or
 - (ii) a non-standard environmental authority (mining activities); and
- (c) if the application is for a standard environmental authority (mining activities), state—
 - (i) the type of environmental authority (mining activities) applied for; and
 - (ii) whether the applicant is able to comply with the standard environmental conditions for that authority; and
- (d) be accompanied by the prescribed fee that, under a regulation, must accompany the application.⁴⁹

(2) If the application is for an environmental authority (prospecting) or an environmental authority (mining claim), it must also be supported by

⁴⁸ See also section 303 (Restrictions on authority or transfer taking effect).

⁴⁹ See also chapter 6, part 1 (Integrated authorities).

enough information to allow the administering authority to decide the application.

(3) If the application is for another type of environmental authority (mining activities), it must also be supported by enough information to allow the administering authority to make an assessment level decision for the application.

(4) Subsection (3) does not prevent the application being supported by other information that allows the administering authority to decide the application.⁵⁰

(5) The requirements under this section are called the “**application requirements**”.

Subdivision 2—Applications for mining projects

Single application required for mining project

155.(1) This section applies to a person who may apply for an environmental authority (mining activities) for mining activities proposed to be carried out as a mining project.

(2) The person may only make a single application for 1 environmental authority (mining activities) for all mining activities that form the project.

(3) The application must—

(a) comply with subdivision 1; and

(b) state—

(i) each type of environmental authority (mining activities) applied for; and

(ii) whether each stated type is proposed to be a standard or non-standard environmental authority (mining activities).

(4) If any relevant mining tenement for the application is a mining claim or mining lease, part 6, divisions 6 to 8 must be complied with for the

⁵⁰ For when the other information must be given, see sections 189 (Environmental management plan—content requirements) and 203 (EMOS—content requirements).

whole application.⁵¹

(5) If the administering authority grants the application, it may issue—

- (a) 1 environmental authority (mining activities) for all the activities (a “**project authority**”); or
- (b) 2 or more environmental authorities (mining activities) for the activities.⁵²

(6) A project authority must—

- (a) state each type of environmental authority (mining activities) that forms the project authority; and
- (b) identify the conditions applying to each type.

(7) For applying parts 7 to 13 to a project authority, each type of environmental authority (mining activities) that forms the project authority is taken to be an environmental authority (mining activities) of that type.

Single environmental authority required for mining project

156.(1) This section applies if an environmental authority (mining activities) has been granted for a mining project.

(2) The holder of the authority can not apply for a separate environmental authority (mining activities) for an additional mining activity proposed to be carried out as part of the mining project.

(3) Subsection (2) applies whether or not the additional activity is proposed to be carried out under another mining tenement as part of the mining project.

(4) This section does not prevent the holder from applying to amend or replace the authority.

⁵¹ Subdivision 1 (General provisions about applications)
Part 6, divisions 6 (Public notice and objections stage for all applications),
7 (Decision stage) and 8 (Miscellaneous provisions)

⁵² See also chapter 6, part 1 (Integrated authorities).

Subdivision 3—Joint applications**Application of sdiv 3**

157. This subdivision applies if 2 or more persons (“**joint applicants**”) jointly apply for 1 or more environmental authorities (mining activities).

Joint application may be made

158.(1) The administering authority may accept an application (a “**joint application**”) made for all the joint applicants by a person who is a joint applicant if it is satisfied the person is authorised to make the application for each of the joint applicants.

(2) More than 1 joint application may be made by the person for the same joint applicants.

Appointment of principal applicant

159.(1) The joint applicants may appoint 1 of them as the principal applicant for a joint application made by them.

(2) However, the appointment may be made only—

- (a) in the joint application; or
- (b) by a signed notice from all the joint applicants to the administering authority.

(3) The joint applicants may, by a signed notice from all of them to the authority, cancel the appointment.

Effect of appointment

160. If a person holds an appointment as the principal applicant for a joint application—

- (a) the principal applicant may, for all applicants for the application, give or submit to the administering authority a notice or other document relating to the application; and
- (b) the authority may—

- (i) give a notice or other document relating to the application to all the applicants, by giving it to the principal applicant; or
- (ii) make a requirement under this chapter relating to the application of all the applicants, by making it of the principal applicant.⁵³

Division 3—Assessment level decision for certain applications

Operation of div 3

161.(1) This division provides for a decision (the “**assessment level decision**”) about the level at which an application for the following is to be assessed—

- (a) an environmental authority (exploration);
- (b) an environmental authority (mineral development);
- (c) an environmental authority (mining lease).

(2) Subject to section 165, the administering authority must make the assessment level decision.

Assessment level decision

162.(1) The administering authority must, within the period prescribed under a regulation, decide whether the application is a standard or non-standard application.

(2) The authority may decide the application is a standard application only if it considers—

- (a) each relevant mining activity is a standard mining activity; and
- (b) there are relevant standard environmental conditions.

(3) However, the application must be decided as a non-standard application if—

- (a) the application is for a mining project; and

⁵³ See also part 13, division 4 (Principal holder of authority).

- (b) the authority decides any proposed mining activity that forms part of the project is not a standard mining activity.

Consequence of failure to decide

163.(1) This section applies if the administering authority does not make the assessment level decision within the period prescribed under section 162(1).

(2) If the application is for a standard authority, the authority is taken to have decided the application is a standard application.

(3) If the application is for a non-standard authority, the authority is taken to have decided the application is a non-standard application.

Decision about EIS requirement

164.(1) If the application is decided to be a non-standard application, the administering authority must, within the period prescribed under a regulation, decide whether an EIS is required for the application.

(2) The authority must, in making the decision, consider the standard criteria.

(3) If the authority does not make the decision within the prescribed period, it is taken, at the end of the period, to have decided that no EIS is required.

Ministerial decision about assessment level

165.(1) This section applies despite any decision by the administering authority under this division.

(2) The EPA Minister may, at any time before an environmental authority is issued for the application, make the assessment level decision.

(3) If the Minister decides the application is a non-standard application, the Minister must decide—

- (a) whether there is to be an EIS requirement for the application; and

(b) at what stage, or step within a stage, under part 5 or 6⁵⁴ the processing of the application must start or resume.

(4) However, the stage or step must not be after the giving of the draft environmental authority.

(5) The deciding of the application must start or resume at the stage or step decided by the Minister.

(6) The Minister must, in making a decision under this section, consider the standard criteria.

Notice for non-standard applications

166.(1) This section applies if the assessment level decision is that the application is a non-standard application.

(2) The administering authority must, within 10 business days after the decision is made, give the applicant a written notice stating—

- (a) that the application is to be assessed as a non-standard application; and
- (b) whether or not an EIS is required for the application; and
- (c) if the Minister made the decision the stage or step within a stage decided by the Minister in the process under part 5 or 6 for the processing of the application to start or resume.

PART 3—PROCESSING ENVIRONMENTAL AUTHORITY (PROSPECTING) APPLICATIONS

Operation of pt 3

167. This part provides for the process to assess an environmental authority (prospecting) application.

⁵⁴ Part 5 (Processing environmental authority (Exploration) and environmental authority (Mineral development) applications) or 6 (Processing environmental authority (Mining lease) applications)

Deciding application

168.(1) The administering authority must, within the period prescribed under a regulation, consider the application and decide either to grant or refuse it.

(2) In making the decision, the authority must consider the following—

- (a) the standard criteria;
- (b) the applicant's ability to comply with the relevant standard environmental conditions;
- (c) any suitability report obtained for the application;
- (d) the status of any application under the Mineral Resources Act for each relevant prospecting permit.

Consequence of failure to decide

169. The administering authority is taken to have decided to grant the application if at the end of the period prescribed under a regulation—

- (a) the application requirements have been complied with for the application; and
- (b) the authority has not decided to refuse the application.

Grant of application

170.(1) If the administering authority decides to grant the application it must, within 10 business days after the decision is made, issue the environmental authority in the approved form.

(2) The environmental authority must—

- (a) contain the relevant standard environmental conditions; or
- (b) identify the conditions by reference to their gazettal or to a code of environmental compliance in which they are contained.

(3) The environmental authority must not contain a condition other than a relevant standard environmental condition.

(4) The administering authority must insert the environmental authority in the appropriate register and give the applicant a copy of the environmental

authority within 10 business days after the later of the following events happens—

- (a) the making of the decision;
- (b) the granting of each relevant prospecting permit.

Notice of refusal

171. If the administering authority decides to refuse the application, it must, within 10 business days after the decision is made, give the applicant a written notice stating—

- (a) the decision, and the reasons for it; and
- (b) that the refusal does not stop the applicant from applying for another type of environmental authority (mining activities) for the activities the subject of the application.

PART 4—PROCESSING ENVIRONMENTAL AUTHORITY (MINING CLAIM) APPLICATIONS

Division 1—Preliminary

Operation of pt 4

172. This part provides for the process to assess an environmental authority (mining claim) application.

Division 2—Decision to refuse or to allow to proceed

Administering authority may refuse application

173.(1) The administering authority must, within the period prescribed under a regulation (the “**refusal period**”), consider the application and decide either to refuse it or allow it to proceed under divisions 3 and 4.

- (2) The authority must, in making the decision, consider the following—
- (a) the standard criteria;
 - (b) the applicant's ability to comply with the relevant standard environmental conditions;
 - (c) any suitability report obtained for the application;
 - (d) the status of any application under the Mineral Resources Act for each relevant mining tenement.

Notice of refusal

174. If the administering authority decides to refuse the application, it must, within 10 business days after the decision is made, give the applicant a written notice stating—

- (a) the decision, and the reasons for it; and
- (b) that the refusal does not stop the applicant from applying for another type of environmental authority (mining activities) for the activities the subject of the application.

Division 3—Draft environmental authority stage

Obligation to prepare draft environmental authority

175.(1) This section applies if the administering authority does not, within the refusal period, decide to refuse the application.

(2) The authority must give the applicant and the mining registrar a draft environmental authority within the period prescribed under a regulation.

- (3) The draft must—
- (a) be in the approved form; and
 - (b) contain the relevant standard environmental conditions or identify them by reference to their gazettal or to a code of environmental compliance in which they are contained; and
 - (c) comply with this division.

Additional conditions may be included

176.(1) The applicant may, before the draft is given, ask the administering authority to include an additional condition in the draft.⁵⁵

(2) The request must be—

- (a) made in the application or in the approved form; and
- (b) supported by enough information to allow the authority to decide whether to include the additional condition; and
- (c) be accompanied by the fee prescribed under a regulation.

(3) In deciding whether to include an additional condition the authority must—

- (a) comply with any relevant EPP requirement; and
- (b) subject to paragraph (a)—consider the standard criteria.

(4) However, an additional condition may be included only if the authority considers—

- (a) the condition is necessary or desirable; and
- (b) that, if the condition is included, the relevant mining activity would still be a standard mining activity.

(5) An additional condition may be included even if the applicant did not ask for it.

Division 4—Public notice, objection and decision stage**Mining lease process under pt 6, divs 6–8 applies**

177.(1) The process to assess an environmental authority (mining lease) application under part 6, divisions 6 to 8 applies to the application, as if—

- (a) the application were an environmental authority (mining lease) application; and
- (b) a reference to an environmental authority (mining lease) were a

⁵⁵ See section 216(2) (Right to make objection), as it is applied by section 177 (Mining lease process under pt 6, divs 6–8 applies).

- reference to an environmental authority (mining claim); and
- (c) a reference to the relevant mining lease application were a reference to the relevant mining claim application; and
 - (d) the reference in section 211(2)(a) to the giving and publication of a certificate of public notice were a reference to the actions under the Mineral Resources Act, section 64B(2)(a) and (c).⁵⁶
- (2) The process applies with any other necessary changes.

PART 5—PROCESSING ENVIRONMENTAL AUTHORITY (EXPLORATION) AND ENVIRONMENTAL AUTHORITY (MINERAL DEVELOPMENT) APPLICATIONS

Division 1—Preliminary

Operation of pt 5

- 178.** This part provides for the process to assess—
- (a) an environmental authority (exploration) application; or
 - (b) an environmental authority (mineral development) application.

Division 2—Standard applications

Application of div 2

- 179.** This division applies if the application is a standard application.

⁵⁶ Part 6, divisions 6 (Public notice and objections stage for all applications), 7 (Decision stage) and 8 (Miscellaneous provisions)
Section 211 (Public notice of application)
Mineral Resources Act, section 64B (Applicant's obligations for certificate of public notice)

Additional conditions may be imposed

180.(1) The administering authority may, in granting the application, impose an additional condition on the environmental authority.

(2) The applicant may ask the authority to impose an additional condition.

(3) The request must be—

- (a) made in the application or in the approved form; and
- (b) supported by enough information to allow the authority to decide whether to impose the additional condition; and
- (c) be accompanied by the fee prescribed under a regulation.

(4) In deciding whether to impose an additional condition the authority must—

- (a) comply with any relevant EPP requirement; and
- (b) subject to paragraph (a)—consider the standard criteria.

(5) However, an additional condition may be imposed only if the authority considers—

- (a) the condition is necessary or desirable; and
- (b) that, if the condition is imposed, the relevant mining activity would still be a standard mining activity.

(6) An additional condition may be imposed even if the applicant did not ask for it.

Deciding application

181.(1) The administering authority must, within the period prescribed under a regulation, consider the application and decide whether—

- (a) to grant or refuse the application; and
- (b) to impose any additional condition.

(2) In making the decisions, the authority must consider the following—

- (a) the application documents for the application;
- (b) the standard criteria;
- (c) the applicant's ability to comply with the relevant standard

environmental conditions;

- (d) any suitability report obtained for the application;
- (e) the status of any application under the Mineral Resources Act for each relevant mining tenement.

Consequence of failure to decide

182.(1) The administering authority is taken to have decided to grant the application at the end of the period prescribed under section 181(1) if—

- (a) the application requirements have been complied with for the application; and
- (b) the authority has not decided to refuse the application.

(2) Also, if the applicant asked for an additional condition, the administering authority is taken to have decided to impose the condition on the environmental authority if the administering authority has not decided to refuse the request.

(3) This section ceases to apply and is taken never to have applied if, under section 165,⁵⁷ the EPA Minister decides the application is a non-standard application.

Grant of application

183.(1) If the administering authority decides to grant the application, it must, within 10 business days after the decision is made, issue the environmental authority in the approved form.

- (2) The environmental authority must—
 - (a) either—
 - (i) contain the standard environmental conditions for each relevant mining activity; or
 - (ii) identify the conditions by reference to their gazettal or to a code of environmental compliance in which they are contained; and

⁵⁷ Section 165 (Ministerial decision about assessment level)

(b) contain any additional condition imposed.

(3) The administering authority must insert the environmental authority in the appropriate register and give the applicant a copy of the environmental authority within 10 business days after the later of the following events happens—

- (a) the making of the decision;
- (b) the granting of each relevant mining tenement for the application.

Notice about refusal or condition decision

184.(1) This section applies if the administering authority decides—

- (a) to refuse the application; or
- (b) to impose an additional condition on the environmental authority and the condition is not the same, or to the same effect, as an additional condition agreed to or requested by the applicant; or
- (c) to refuse to impose an additional condition requested by the applicant.

(2) The administering authority must, within 10 business days after the decision is made, give the applicant a written notice stating—

- (a) the decision, and the reasons for it; and
- (b) that the decision does not stop the applicant from applying for another environmental authority (mining activities) for the activities the subject of the application.

Division 3—Non-standard applications

Subdivision 1—Preliminary

Application of div 3

185. This division applies if the application is a non-standard application.

Subdivision 2—EIS stage**EIS process applies**

186.(1) If an EIS requirement has been made for the application, the EIS process must be completed.⁵⁸

(2) The process may proceed whether or not the applicant has submitted an environmental management plan under subdivision 3.

Subdivision 3—Environmental management document stage**Environmental management plan required**

187.(1) The applicant must submit to the administering authority an environmental management plan for all relevant mining activities.

(2) If an EIS requirement has been made for the application, the plan may be submitted whether or not the EIS process has been completed.

Purpose of environmental management plan

188. The purpose of an environmental management plan is to propose environmental protection commitments to help the administering authority decide the conditions of the environmental authority.

Environmental management plan—content requirements

189.(1) An environmental management plan must—

- (a) be in the approved form; and
- (b) describe the following—
 - (i) each relevant mining tenement;
 - (ii) all relevant mining activities;
 - (iii) the land on which the mining activities are to be carried out;

⁵⁸ For completion of the EIS process, see section 60 (When process is completed).

Environmental Protection Act 1994

- (iv) the environmental values likely to be affected by the mining activities;
 - (v) the potential adverse and beneficial impacts of the mining activities on the environmental values; and
 - (c) state the environmental protection commitments the applicant proposes for the mining activities to protect and enhance the environmental values under best practice environmental management; and
 - (d) contain enough other information to allow the administering authority to decide the application and conditions to be imposed on the environmental authority; and
 - (e) another matter prescribed under an environmental protection policy or a regulation.
- (2)** The environmental protection commitments must—
- (a) be stated in a way that allows them to be measured and to be audited under part 11; and
 - (b) state the environmental protection objectives and the standards and measurable indicators, including, for example, objectives for progressive and final rehabilitation and management of contaminated land; and
 - (c) include—
 - (i) an action program to ensure the commitments are achieved or implemented, including, for example, programs for the following in relation to the mining activities—
 - continuous improvement
 - environmental auditing
 - monitoring
 - reporting
 - staff training; and
 - (ii) a rehabilitation program for land proposed to be disturbed under each relevant mining tenement.

(3) The rehabilitation program must state a proposed amount of financial assurance.

Amending environmental management plan

190.(1) This section applies if the applicant has submitted an environmental management plan for the application (the “**original plan**”).

(2) The applicant may amend or replace the original plan before the assessment period under section 191(2) ends.

(3) However, an amendment may be made only by giving the administering authority a written notice stating the amendment (an “**EM plan amendment notice**”).

(4) An EM plan amendment notice must be accompanied by the fee prescribed under a regulation.

(5) The submitted environmental management plan is taken to be the original plan, as amended from time to time by any EM plan amendment notice given for the original plan.

EM plan assessment report may be prepared

191.(1) The administering authority may give the applicant an assessment report (an “**EM plan assessment report**”) about a submitted environmental management plan.

(2) However, an EM plan assessment report may be given only within the period prescribed under a regulation (the “**assessment period**”).

(3) An EM plan assessment report may be included in an EIS assessment report for a project that includes a relevant mining activity.

Requirements for EM plan assessment report

192. In making an EM plan assessment report, the administering authority must—

- (a) comply with any relevant EPP requirement; and
- (b) subject to paragraph (a), consider—
 - (i) the submitted environmental management plan; and

- (ii) whether the plan complies with the content requirements under section 189; and
- (iii) the standard criteria.

Subdivision 4—Decision stage

Deciding application

193.(1) The administering authority must, within the period prescribed under a regulation, consider the application and decide either to grant or refuse it.

(2) The authority may, in granting the application, impose the conditions on the environmental authority it considers necessary or desirable.

(3) In deciding whether to grant or refuse the application or to impose a condition the authority must—

- (a) comply with any relevant EPP requirement; and
- (b) subject to paragraph (a), consider the following—
 - (i) the application documents for the application;
 - (ii) the standard criteria;
 - (iii) any suitability report obtained for the application;
 - (iv) the status of any application under the Mineral Resources Act for each relevant mining tenement.

Grant of application

194.(1) If the administering authority decides to grant the application, it must, within 10 business days after the decision is made, issue the environmental authority.

(2) The environmental authority must be—

- (a) in the approved form; and
- (b) contain all conditions imposed on the environmental authority.

(3) The administering authority must insert the environmental authority

in the appropriate register and give the applicant a copy of the environmental authority within 10 business days after the later of the following events happens—

- (a) the making of the decision;
- (b) the granting of each relevant mining tenement for the application.

Information notice about refusal or condition decision

195.(1) This section applies if the administering authority decides—

- (a) to refuse the application; or
- (b) to impose a condition and it is not the same, or to the same effect, as any condition agreed to by the applicant.

(2) The authority must, within 10 business days after the decision is made, give the applicant an information notice about the decision.

PART 6—PROCESSING ENVIRONMENTAL AUTHORITY (MINING LEASE) APPLICATIONS

Division 1—Preliminary

Operation of pt 6

196. This part provides the process to assess an environmental authority (mining lease) application.

Summary of pt 6 process

197.(1) The stages for deciding the application and the main steps within each stage are stated in subsection (3).

(2) However, if the application is a standard application only stages 3 to 6 apply.

(3) For subsection (1), the stages are as follows—

stage 1 EIS—div 2 and ch 3, pt 1

If an EIS requirement has been made for the application, the EIS process must be completed.

stage 2 Environmental management document—div 3

1. The applicant must submit an EMOS.
2. The administering authority may give the applicant an EMOS assessment report, whether or not stage 1 has been completed.

stage 3 Decision to refuse or to allow to proceed—div 4

1. The administering authority must, within the refusal period, decide either to refuse the application or to allow it to proceed under stages 4 to 6.
2. A refusal decision for a non-standard application is subject to review and to appeal to the tribunal under chapter 11, part 3.
3. If no refusal decision is made within the refusal period, stages 4 to 6 apply.

stage 4 Draft environmental authority—div 5

1. The administering authority gives the applicant a draft environmental authority that includes proposed conditions.
2. If the application is a standard application, the relevant standard environmental conditions must be included.

stage 5 Public notice and objections—div 6

1. The applicant gives public notice of the application documents for the application.
2. The administering authority receives, within the objection period, any objections to the application documents.

stage 6 Decision stage—div 7**(a) If there are objections—div 7, sdiv 1**

If there are any current objections when the objection period ends—

1. The objections are referred to the tribunal.
2. The tribunal makes a recommendation about the application to the MRA Minister.
3. The EPA Minister decides the application.

(b) If no objections or objections are withdrawn—div 7, sdiv 2

The environmental authority must be issued on the basis of the draft environmental authority if—

1. There are no current objections when the objection period ends; or
2. All objections are withdrawn before the tribunal makes its recommendation.

Division 2—EIS stage for non-standard applications**Application of div 2**

198. This division applies only if the application is a non-standard application and an EIS requirement has been made for the application.

EIS process applies

199.(1) The EIS process must be completed.⁵⁹

(2) The process may proceed whether or not the applicant has submitted an EMOS under division 3.

⁵⁹ For completion of the EIS process, see section 60 (When process is completed).

***Division 3—Environmental management document stage for
non-standard applications***

Application of div 3

200. This division applies only if the application is a non-standard application.

EMOS required

201.(1) The applicant must submit to the administering authority an EMOS for all relevant mining activities (the “**submitted EMOS**”).

(2) If an EIS requirement has been made for the application, the EMOS may be submitted whether or not the EIS process has been completed.

Purpose of EMOS

202. The purpose of an EMOS is to propose environmental protection commitments to help the administering authority prepare the draft environmental authority for the application.

EMOS—content requirements

203.(1) A submitted EMOS must—

- (a) be in the approved form; and
- (b) describe the following—
 - (i) each relevant mining lease;
 - (ii) all relevant mining activities;
 - (iii) the land on which the mining activities are to be carried out;
 - (iv) the environmental values likely to be affected by the mining activities;
 - (v) the potential adverse and beneficial impacts of the mining activities on the environmental values; and
- (c) state the environmental protection commitments the applicant

proposes for the mining activities to protect and enhance the environmental values under best practice environmental management; and

- (d) contain enough other information to allow the administering authority to decide the application and conditions to be imposed on the environmental authority; and
- (e) another matter prescribed under an environmental protection policy or a regulation.

(2) The environmental protection commitments must—

- (a) be stated in a way that allows them to be measured and to be audited under part 11; and
- (b) state the environmental protection objectives and the standards and measurable indicators, including, for example, objectives for progressive and final rehabilitation and management of contaminated land; and
- (c) include control strategies to ensure the objectives are achieved, including for example, strategies in relation to the mining activities—
 - continuous improvement
 - environmental auditing
 - monitoring
 - reporting
 - staff training.

Amending EMOS

204.(1) This section applies if there is a submitted EMOS for the application.

(2) The applicant may amend or replace the submitted EMOS at any time before the refusal period ends.

(3) However, an amendment may be made only by giving the administering authority a written notice stating the amendment (an “**EMOS amendment notice**”).

(4) An EMOS amendment notice must be accompanied by the fee prescribed under a regulation.

(5) The submitted EMOS is taken to be the original EMOS, as amended from time to time by any EMOS amendment notice given for the original EMOS.

EMOS assessment report may be prepared

205.(1) The administering authority may give the applicant an assessment report (an “**EMOS assessment report**”) about a submitted EMOS.

(2) However, an EMOS assessment report may be given only within the period prescribed under a regulation (the “**assessment period**”).

(3) An EMOS assessment report may be included in an EIS assessment report for a project that includes a relevant mining activity.

Requirements for EMOS assessment report

206. In making an EMOS assessment report, the administering authority must—

- (a) comply with any relevant EPP requirement; and
- (b) subject to paragraph (a), consider—
 - (i) the submitted EMOS; and
 - (ii) whether the EMOS complies with the content requirements under section 203;⁶⁰ and
 - (iii) the standard criteria.

Division 4—Decision to refuse or to allow to proceed

Administering authority may refuse application

207.(1) The administering authority must, within the period prescribed

⁶⁰ Section 203 (EMOS—content requirements)

under a regulation (the “**refusal period**”), consider the application and decide either to refuse it or allow it to proceed under divisions 5 to 7.

(2) The authority must, in making the decision, consider the following—

- (a) the application documents for the application;
- (b) the standard criteria; and
- (c) if the application is a standard application—the applicant’s ability to comply with the relevant standard environmental conditions;
- (d) any suitability report obtained for the application;
- (e) the status of any application under the Mineral Resources Act for each relevant mining tenement.

(3) If the decision is to refuse the application, the authority must, within 10 business days after the decision is made, give the applicant—

- (a) if the application is a standard application—a written notice stating the decision and the reasons for it; or
- (b) if the application is a non-standard application—an information notice about the decision.

Division 5—Draft environmental authority stage

Obligation to prepare draft environmental authority

208.(1) This section applies if the administering authority does not, within the refusal period, decide to refuse the application.

(2) The authority must give the applicant and the mining registrar a draft environmental authority within the later of the following periods to end—

- (a) 5 business days after the refusal period ends;
- (b) if additional conditions have been requested under section 209—10 business days after the last request for additional conditions was made;
- (c) if the applicant and the authority have, within the later of the periods under paragraph (a) or (b) to end, agreed to a longer period for the preparation of the draft—the longer period.

(3) The draft must—

- (a) be in the approved form; and
- (b) include proposed conditions for the environmental authority; and
- (c) comply with this division.

Conditions—standard applications

209.(1) This section applies if the application is a standard application.

(2) The administering authority must in the draft environmental authority—

- (a) include the relevant standard environmental conditions; or
- (b) identify the conditions by reference to their gazettal or to a code of environmental compliance in which they are contained.

(3) The applicant may, before the draft is given, ask the authority to include an additional condition in the draft.

(4) The request must be—

- (a) made in the application or in the approved form; and
- (b) supported by enough information to allow the authority to decide whether to include the additional condition; and
- (c) be accompanied by the fee prescribed under a regulation.

(5) In deciding whether to include an additional condition the authority must—

- (a) comply with any relevant EPP requirement; and
- (b) subject to paragraph (a)—consider the standard criteria.

(6) However, an additional condition may be included only if the authority considers—

- (a) the condition is necessary or desirable; and
- (b) that, if the condition is included, the relevant mining activity would still be a standard mining activity.

(7) An additional condition may be included even if the applicant did not ask for it.

Conditions—non-standard applications

210.(1) This section applies if the application is a non-standard application.

(2) The administering authority may include conditions in the draft environmental authority it considers necessary or desirable.

(3) In fixing proposed conditions for the draft, the administering authority must—

- (a) comply with any relevant EPP requirement; and
- (b) subject to paragraph (a), consider—
 - (i) the application documents for the application; and
 - (ii) the standard criteria.

Division 6—Public notice and objections stage for all applications**Public notice of application**

211.(1) The applicant must give and publish a notice about the application (the “**application notice**”).

(2) The application notice must be given and published—

- (a) simultaneously or together with, and in the same way as, the certificate of public notice for the relevant mining lease application under the Mineral Resources Act, section 252B;⁶¹ and
- (b) in another way prescribed under a regulation.

(3) Also, the administering authority may decide an additional or substituted way to give or publish the application notice if it gives the applicant an information notice about the decision before the application notice is given.

(4) This section is subject to section 215.

⁶¹ Mineral Resources Act, section 252B (Applicant’s obligations for certificate of public notice)

Required content of application notice

212.(1) The application notice must be in the approved form and state the following—

- (a) a description of each relevant mining activity;
- (b) the land on which the mining activities are to be carried out;
- (c) what are the application documents for the application;
- (d) where the application documents may be inspected;
- (e) where copies of, or extracts from, the application documents may be obtained;
- (f) who has the right to make an objection under section 216;
- (g) the period (the “**objection period**”) during which objections may be given;
- (h) how to make a properly made objection;
- (i) another matter prescribed under a regulation.

(2) The objection period must end on—

- (a) if there is only 1 relevant mining tenement application—the last objection day under the Mineral Resources Act for the application; or
- (b) if there is more than 1 relevant mining tenement application—the later of the last objection days under the Mineral Resources Act for the applications.⁶²

(3) This section is subject to section 215.

Public access to application documents

213. The administering authority must, within the objection period—

- (a) keep the application documents for the application open for public inspection at the authority’s head office during office hours on business days; and

⁶² For the last objection day under the Mineral Resources Act, see section 252A (Issue of certificate of public notice) of that Act.

- (b) permit a person to take extracts from the application documents for the application or, on payment of the appropriate fee to the authority, give the person a copy of the documents, or a part of the documents.

Declaration of compliance

214.(1) The applicant must, within 5 business days after the objection period starts, give the administering authority a statutory declaration declaring whether or not the applicant has complied with the notice requirements under section 211 and 212 (the “**public notice requirements**”).

(2) A copy of the application notice must be attached to the declaration.

(3) The applicant is taken to have complied with the public notice requirements if—

- (a) a declaration is given under this section; and
- (b) the declaration states the applicant has complied with the requirements.

Substantial compliance may be accepted

215.(1) If the applicant has not complied with the public notice requirements, the administering authority must, before the objection period ends, decide whether to allow the application to proceed under this part as if the noncompliance had not happened.

(2) The authority may decide to allow the application to proceed only if it is satisfied there has been substantial compliance with the public notice requirements.

(3) If the authority decides not to allow the application to proceed—

- (a) any steps purportedly taken to comply with the public notice requirements are of no effect; and
- (b) the authority must, within 10 business days after the decision is made—
 - (i) fix a substituted way to give or publish the application notice

and give the applicant a written notice of the substituted way;
and

- (ii) if the objection period under section 212 has or will start before the giving or publication of the substituted notice—fix a new objection period for the application and give the applicant written notice of the period; and
- (iii) give the applicant an information notice about the decision.

(4) The stated substituted way to give or publish the application notice applies instead of the requirements for giving or publishing the notice under section 211.

Right to make objection

216.(1) An entity may make an objection about—

- (a) the application; or
- (b) the draft environmental authority for the application; or
- (c) a condition included in the draft.

(2) However, if the application is a standard application, the applicant can not object to a condition included in the draft environmental authority.

(3) An objection may be made only by giving it to the administering authority.

Acceptance of objections

217.(1) The administering authority must accept an objection if it—

- (a) is written; and
- (b) is signed by or for each entity (“**signatory**”) who made the objection; and
- (c) states the name of and an address for each signatory; and
- (d) is made to the administering authority; and
- (e) is received on or before the last day of the objection period; and
- (f) states the grounds of the objection and the facts and circumstances relied on in support of the grounds.

(2) An objection that complies with subsection (1) is called a “**properly made objection**”.

(3) The authority may accept a written objection even if it is not a properly made objection.

Amendment or withdrawal of objection

218.(1) If the administering authority has accepted an objection, the entity who made the objection may, by written notice in the approved form—

- (a) within the objection period, amend or replace the objection; or
- (b) at any time before the objections decision is made, withdraw the objection.

(2) However, a notice may be given only as follows—

- (a) before the objection period ends—by giving it to the authority;
- (b) after the objection period ends—by filing it with the tribunal and giving the authority a copy.

Division 7—Decision stage

Subdivision 1—Referral to tribunal if current objection

Referral to tribunal

219.(1) If there is a current objection to the application when the objection period for the application ends, the administering authority must, within 10 business days, refer the application to the tribunal for a decision under this subdivision (the “**objections decision**”).

(2) The referral must be made by filing with the registrar of the tribunal—

- (a) a notice, in the approved form, referring the application to the tribunal; and
- (b) a copy of the application documents for the application and each current objection.

(3) The referral starts a proceeding before the tribunal for it to make the objections decision.

(4) The parties to the proceeding are as follows—

- (a) the authority;
- (b) the applicant;
- (c) each objector for the application;
- (d) anyone else decided by the tribunal.

(5) The authority must, within 10 business days after making the referral—

- (a) give the applicant a copy of the notice and each current objection; and
- (b) give each objector a copy of the notice.

Objections decision hearing

220.(1) The tribunal may, of its own initiative, make orders or directions it considers appropriate for a hearing for the objections decision (the “**objections decision hearing**”).

(2) The orders or directions must, as much as practicable, ensure the objections decision hearing happens as closely as possible to hearings under the Mineral Resources Act for each relevant mining tenement.

(3) The directions may include directions about the constitution of the tribunal for the objections decision hearing.

(4) This section is subject to the *Land and Resources Tribunal Act 1999*, section 40 and part 4, divisions 1 and 2.⁶³

Tribunal mediation of objections

221.(1) At any time before the objections decision is made, any party to the proceeding may ask the tribunal to conduct or provide mediation for the

⁶³ *Land and Resources Tribunal Act 1999*, section 40 (Specific requirements for constituting tribunal for proceeding) and part 4 (Organisation and operation of tribunal), divisions 1 (Sittings of tribunal) and 2 (Proceedings)

objector's objection.

(2) The mediation must be conducted by the tribunal or a mediator chosen by the tribunal.⁶⁴

(3) However, the mediation is subject to orders or directions made under section 220(4).

Nature of objections decision

222.(1) The objections decision for the application must be a recommendation to the MRA Minister that—

- (a) the application be granted on the basis of the draft environmental authority for the application; or
- (b) the application be granted, but on stated conditions that are different to the conditions in the draft; or
- (c) the application be refused.

(2) The tribunal must give a copy of the decision to the EPA Minister as soon as practicable after the decision is made.

Matters to be considered for objections decision

223. In making the objections decision for the application, the tribunal must consider the following—

- (a) the application documents for the application;
- (b) any relevant EPP requirement;
- (c) the standard criteria;
- (d) each current objection;
- (e) for a standard application—any relevant standard environmental conditions;
- (f) any suitability report obtained for the application;

⁶⁴ For the conduct of the mediation, see the *Land and Resources Tribunal Act 1999*, sections 72 to 75.

- (g) the status of any application under the Mineral Resources Act for each relevant mining tenement.

Advice from MRA Minister about objections decision

224.(1) After the objections decision for the application has been made, the EPA Minister must seek advice from the MRA Minister about the decision.

(2) The advice may be sought at the time and in the way the EPA Minister considers appropriate.

(3) The MRA Minister may give the advice sought only within the later of the following periods to end—

- (a) 10 business days after the EPA Minister seeks the advice;
- (b) if the MRA Minister and the EPA Minister have, within the 10 business days, agreed to a longer period—the longer period.

(4) In giving the advice sought, the MRA Minister may seek advice from any entity.

(5) A contravention of this section does not invalidate a decision under section 225 or an environmental authority granted under section 226 to which the decision relates.

EPA Minister's decision on application

225.(1) The EPA Minister must make 1 of the following decisions (the “**Minister's decision**”)—

- (a) that the application be granted on the basis of the draft environmental authority for the application;
- (b) that the application be granted, but on conditions stated in the Minister's decision that are different to the conditions in the draft;
- (c) that the application be refused.

(2) The Minister's decision must be made within a reasonable period after the end of the later period under section 224(3).

(3) The Minister must, before making the decision consider—

- (a) the objections decision; and
- (b) any conditions for the environmental authority recommended by the coordinator-general under the State Development Act, section 29Y.⁶⁵

(4) To remove any doubt, it is declared that the Minister is not bound to impose on the environmental authority a condition recommended under the objections decision or a condition mentioned in subsection (3)(b).

(5) The administering authority must, within 10 business days after the decision is made, give the applicant a written notice stating the decision, and the reasons for it.

Grant of application

226.(1) This section applies if the Minister's decision is to grant the application.

(2) The administering authority must, within 10 business days after the decision is made, issue the environmental authority in the approved form.

(3) The environmental authority must—

- (a) include the Minister's decision; and
- (b) contain the conditions decided by the Minister under section 225.

(4) The administering authority must insert the environmental authority in the appropriate register and give the applicant a copy of the environmental authority within 10 business days after the later of the following events happens—

- (a) the making of the decision;
- (b) the granting of each relevant mining tenement for the application.

⁶⁵ State Development Act, part 4 (Environmental coordination) and section 29K (Coordinator-General evaluates EIS, submissions other materials and prepares report)

***Subdivision 2—Grant if no current objection at end of objection period
or before objections decision***

Application of sdiv 2

227. This subdivision applies if—

- (a) at the end of the objections period for the application there is no current objection to the application; or
- (b) after the objection period, but before the objections decision is made, there are no longer any current objections.

Grant of application on basis of draft environmental authority

228.(1) The administering authority must, within 10 business days, issue the environmental authority in the approved form.

(2) The conditions of the environmental authority must be the same, or substantially the same, as the draft environmental authority for the application.

(3) The administering authority must insert the environmental authority in the appropriate register and give the applicant a copy of the environmental authority within 10 business days after the granting of each relevant mining tenement for the application.

Division 8—Miscellaneous provisions

Withdrawing an application

229.(1) An application may, by written notice given to the administering authority, be withdrawn by the applicant at any time before the environmental authority is issued.

(2) If the applicant withdraws the application the applicant must give each entity who has made a current objection notice of the withdrawal.

Certain objections apply for later applications

230.(1) This section applies if—

- (a) an environmental authority (mining activities) application is withdrawn; and
- (b) within 1 year after the withdrawal, the applicant makes a later application; and
- (c) each relevant mining activity for the later application is the same, or substantially the same, as the withdrawn application.

(2) Any properly made objection about the withdrawn application is taken to be a properly made objection about the later application.

Effects of noncompliance with application process

231.(1) This section applies to an application for an environmental authority (mining activities) if the applicant—

- (a) does not comply with—
 - (i) the application requirements; or
 - (ii) a requirement under a relevant process under this part for assessing the application; or
- (b) becomes entitled to take the next step under the process and has not taken the step.

(2) The following are suspended until the requirement is complied with or the step is taken—

- (a) the application;
- (b) any obligation under this part in relation to the application imposed on the administering authority, the tribunal or a Minister.

(3) The application lapses on the later of the following days if the requirement has not been complied with or the step has not been taken—

- (a) the first anniversary of the suspension;
- (b) if the applicant and the authority have, before the first anniversary, agreed to a later day—the later day.

(4) This section is subject to section 215.

PART 7—PLAN OF OPERATIONS FOR ENVIRONMENTAL AUTHORITY (MINING LEASE)

Application of pt 7

232. This part applies to an environmental authority (mining lease).

Plan of operations required before acting under relevant mining lease

233.(1) The environmental authority holder must not carry out, or allow the carrying out, of an activity under a relevant mining lease unless—

- (a) a plan of operations for all relevant mining activities has been submitted to the administering authority; and
- (b) at least 28 days, or a shorter period agreed in writing by the administering authority, have passed since the plan was submitted; and
- (c) the plan complies with section 234; and
- (d) the carrying out of the activity is—
 - (i) consistent with the plan; and
 - (ii) done in a period to which the plan applies.

Maximum penalty—100 penalty units.

(2) In this section—

“plan of operations”, for a mining lease, includes any plan of operations submitted to the administering authority for a proposed mining lease substantially the same as the mining lease.

Content requirements

234.(1) A plan of operations must—

- (a) be in the approved form; and
- (b) describe the following—
 - (i) each relevant mining lease for the environmental authority;

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- (ii) the land to which each relevant mining lease applies;
- (iii) the land to which the plan applies; and
- (c) state the period to which the plan applies (the “**plan period**”); and
- (d) include the following—
 - (i) a plan showing where all activities are to be carried out on the land;
 - (ii) an action program for—
 - (A) if the environmental authority is a non-standard environmental authority (mining activities)—achieving or implementing the environmental protection commitments and control strategies under the submitted EMOS; and
 - (B) complying with the conditions of the environmental authority;
 - (iii) a rehabilitation program for land disturbed or proposed to be disturbed under each relevant mining lease;
 - (iv) another matter prescribed under an environmental protection policy or a regulation; and
- (e) be accompanied by—
 - (i) an audit statement for the plan; and
 - (ii) the fee prescribed under a regulation.

(2) The rehabilitation program must state a proposed amount of financial assurance for the plan period.

(3) The audit statement must—

- (a) be made by or for the environmental authority holder; and
- (b) state the extent to which the plan complies with the conditions of the environmental authority; and
- (c) state whether or not the amount of the financial assurance for the environmental authority has been calculated in the way decided by

the administering authority under section 364(3).⁶⁶

- (4) The plan period must not be more than 5 years.
- (5) A plan of operations may relate to 2 or more relevant mining leases.

Amending or replacing plan

235.(1) This section applies if the environmental authority holder has submitted a plan of operations (the “**original plan**”) and the plan period for the plan under section 234 has not ended.

(2) The holder may amend or replace the original plan at any time before the plan period ends only by giving the administering authority a written notice that—

- (a) states—
 - (i) the amendment of the original plan; or
 - (ii) that the original plan is replaced; and
- (b) is accompanied by—
 - (i) for a replacement—the replacement plan; and
 - (ii) an audit statement for the original plan, as amended, or for the replacement plan; and
 - (iii) the fee prescribed under a regulation.

(3) The audit statement must comply with section 234(3).

(4) The holder’s submitted plan of operations is taken to be the original plan, as amended from time to time by any amendment under this section.

(5) However, an amendment must not extend the plan period.

(6) The original plan ceases to apply if it is replaced.

(7) A replacement plan may apply for any period of no more than 5 years from when notice of it is given under this section.

⁶⁶ Section 364 (When financial assurance may be required)

Environmental authority overrides plan

236.(1) This section applies if there is any inconsistency between the environmental authority and a plan of operations.

(2) The authority prevails to the extent of the inconsistency.

(3) The environmental authority holder must, within 28 days after the holder becomes aware of the inconsistency, cause the plan to be amended in a way so that the plan is no longer inconsistent with the authority.

Maximum penalty for subsection (3)—100 penalty units.

PART 8—AMENDMENT OF AUTHORITIES BY APPLICATION*Division 1—Preliminary***Exclusions from amendment under pt 8**

237.(1) An environmental authority (prospecting) can not be amended under this part.

(2) A condition of an environmental authority (mining activities) about requiring a financial assurance can not be amended or discharged under this part.⁶⁷

(3) The requirements of this part do not apply for a partial surrender of an environmental authority (mining activities) allowed by section 269.⁶⁸

⁶⁷ See section 366 (Application for amendment or discharge of financial assurance).

⁶⁸ Section 269 (Surrender may be partial)

Division 2—General provisions for amendment applications**Who may apply**

238. The holder of an environmental authority (mining activities) may, at any time, apply to the administering authority to amend the environmental authority (an “**amendment application**”).

Additional conditions may be sought for standard authorities

239. An amendment application may seek additional conditions for the environmental authority (mining activities) if it is a standard environmental authority (mining activities).

Requirements for application

240. An amendment application must be—

- (a) made in the approved form; and
- (b) supported by enough information to allow the administering authority to decide the application; and
- (c) accompanied by the fee prescribed under a regulation.

Division 3—Processing amendment applications for standard authorities**Application of div 3**

241. This division applies if an amendment application is for a standard environmental authority (mining activities).

Deciding application

242.(1) The administering authority must, within the period prescribed under a regulation, decide either to grant or refuse the application.

(2) The authority may grant the application only if—

- (a) it considers—
 - (i) the amendment necessary or desirable; and
 - (ii) that, if the amendment were to be made, each relevant mining activity would still be a standard mining activity; or
- (b) the amendment is to reflect a change in the relevant standard environmental conditions.

(3) However, in making the decision, the authority must consider the following—

- (a) the standard criteria;
- (b) the applicant's ability to comply with the relevant standard environmental conditions;
- (c) any suitability report obtained for the application;
- (d) the status of any application under the Mineral Resources Act for, or relating to, each relevant mining tenement.

(4) The authority may refuse the application on the ground that it would be more appropriate for the applicant to seek the amendment by replacement of the environmental authority.

Consequence of failure to decide

243. The administering authority is taken to have decided to grant the application at the end of the period prescribed under section 242(1) if—

- (a) the requirements under section 240 have been complied with for the application; and
- (b) the authority has not decided to refuse the application.

Steps after making decision

244.(1) If the administering authority decides to grant the application, it must, within 10 business days after the decision is made—

- (a) amend the environmental authority to give effect to the amendment; and

- (b) record particulars of the amendment in the appropriate register; and
- (c) give the applicant a copy of the amended environmental authority.

(2) The amendment takes effect on the day of the amendment or a later day stated in the amended environmental authority.

(3) If the administering authority decides to refuse the application, it must, within 10 business days after the decision is made, give the applicant a written notice stating—

- (a) the decision, and the reasons for it; and
- (b) that the decision does not stop the applicant from applying for another environmental authority (mining activities) for the activities the subject of the application.

Division 4—Processing other amendment applications

Subdivision 1—Preliminary

Application of div 4

245. This division applies if an amendment application is for a non-standard environmental authority (mining activities).

Subdivision 2—Assessment level decision

Assessment level and EIS decisions for application

246.(1) The administering authority must, within the period prescribed under a regulation, decide—

- (a) whether, were the amendment to be made, the level of environmental harm caused by any relevant mining activity is likely to be significantly increased; and
- (b) if the decision under paragraph (a) is that the level is likely to be significantly increased—whether an EIS is required for the

proposed amendment.

(2) The authority must, in making a decision under subsection (1) consider the standard criteria.

(3) The decision under subsection (1)(a) is called the “**assessment level decision**” for the amendment application.

(4) The decision under subsection (1)(b) is called the “**EIS decision**” for the amendment application.

Ministerial decision about assessment level and EIS decisions

247.(1) This section applies despite an assessment level decision by the administering authority.

(2) The EPA Minister may, at any time before the application is decided under this division, make the assessment level decision.

(3) If the Minister’s decision is that the level of environmental harm is likely to be significantly increased, the Minister must also decide whether an EIS is required for the proposed amendment.

(4) If the Minister decides an EIS is not required, the Minister must decide at what stage, or step within a stage, under the provisions applied under section 251, the processing of the application must start or resume.

(5) However, the stage or step must not be after the giving of the draft environmental authority for the amendment application.

(6) The deciding of the application must start or resume at the stage or step decided by the Minister.

(7) The Minister must, in making a decision under this section, consider the standard criteria.

Automatic refusal if EIS required

248.(1) The administering authority must refuse the amendment application if the EIS decision is that an EIS is required for the proposed amendment.

(2) The administering authority must, within 10 business days after the decision is made, give the applicant a written notice stating—

- (a) the decision, and the reasons for it; and
- (b) that the decision does not stop the applicant from applying for another environmental authority (mining activities) for the activities the subject of the application.

(3) However, despite subsection (1), if the decision was made by the administering authority and the Minister, under section 247(3), decides an EIS is not required for the proposed amendment—

- (a) the refusal is taken to be of no effect; and
- (b) the administering authority must, within 10 business days after the Minister's decision is made, give the applicant a written notice stating—
 - (i) the Minister's decision; and
 - (ii) the stage, or step within a stage, that the Minister has under section 247(4) decided the processing of the application must start or resume.

Notice of assessment level decision

249.(1) This section applies if the administering authority or the Minister has made the assessment level decision and the EIS decision is that an EIS is not required for the proposed amendment.

(2) The authority must, within 10 business days, give the applicant a written notice stating—

- (a) the assessment level decision, and the reasons for it; and
- (b) if the Minister made the decision—the stage or step within a stage decided by the Minister under the provisions applied under section 251 for the processing of the application to start or resume.

Subdivision 3—Process if decision is significant increase in environmental harm likely and EIS not required

Application of sdiv 3

250. This subdivision applies—

- (a) if the assessment level decision for the amendment application is that the level of environmental harm is likely to be significantly increased; and
- (b) the EIS decision is that an EIS is not required for the proposed amendment.

Relevant application process applies

251.(1) If the environmental authority is an environmental authority (exploration) or an environmental authority (mineral development), part 5, division 3, subdivisions 3 and 4, apply as if the application were an application for that type of environmental authority.

(2) If the environmental authority is an environmental authority (mining lease), part 6, divisions 3 to 8, apply as if the application were an environmental authority (mining lease) application.⁶⁹

(3) The provisions applied under this section apply—

- (a) with any other necessary changes; and
- (b) subject to sections 252 to 255.

Refusal on ground that replacement environmental authority needed

252.(1) For applying section 193 or 207,⁷⁰ the administering authority

⁶⁹ Part 5, division 3, subdivisions 3 (Environmental management document stage) and 4 (Decision stage)

Part 6, divisions 3 (Environmental management document stage for non-standard applications), 4 (Decision to refuse or to allow to proceed), 5 (Draft environmental authority stage), 6 (Public notice and objections stage for all applications), 7 (Decision stage) and 8 (Miscellaneous provisions)

⁷⁰ Sections 193 (Deciding application) and 207 (Administering authority may refuse application)

may refuse the application on the ground that it would be more appropriate for the applicant to seek the amendment by replacement of the environmental authority.

(2) Subsection (1) does not limit the grounds on which the application may be refused.

Previous environmental management document may be amended

253.(1) The applicant may comply with the environmental management document requirements for the application by submitting an amended version of the environment management document submitted for the application for the environmental authority.

(2) However, the amendments must comply with the environmental management document requirements.

(3) If an amended version is submitted, it is taken to be the submitted environment management document for any later amendment application for the environmental authority.

(4) In this section—

“environmental management document requirements” means the provisions about environmental management documents applied under section 251.

Public notice of application

254.(1) This section applies for publication of the application notice for the amendment application for an environmental authority (mining lease), instead of section 211.⁷¹

(2) Within 10 business days after the applicant is given the draft environmental authority, the applicant must—

- (a) give the application notice to each affected person for each relevant mining lease; and
- (b) publish the notice—

⁷¹ Section 211 (Public notice of application)

- (i) at least once in a newspaper circulating in the locality of the land to which the mining lease is subject; and
- (ii) in any other way decided by the administering authority or prescribed under a regulation.

(3) The administering authority may decide another way of publishing the notice for subsection (2)(b)(ii) only if it gives the applicant an information notice about the decision before the notice is published.

(4) In this section—

“**affected person**” means an entity that would be an affected person if—

- (a) the amendment application were a project; and
- (b) the operational land for the project is each relevant mining lease for the environmental authority.

Objection period

255.(1) Despite section 212(2),⁷² the objection period for the application is the period fixed by the administering authority by written notice to the applicant.

(2) However, the period must be at least 20 business days and must end at least 20 business days after the publication of the application notice under section 254.

Subdivision 4—Process if decision is significant environmental harm increase unlikely

Application of sdiv 4

256. This subdivision applies if the assessment level decision for the amendment application is that the level of environmental harm is unlikely to be significantly increased.

⁷² Section 212 (Required content of application notice)

Deciding application

257.(1) The administering authority must, within the period prescribed under a regulation, decide either to grant or refuse the application.

(2) In making the decision, the authority must—

- (a) comply with any relevant EPP requirement; and
- (b) subject to paragraph (a)—consider the standard criteria.

Steps after making decision

258.(1) If the administering authority decides to grant the application, it must, within 10 business days after the decision is made—

- (a) amend the environmental authority to give effect to the amendment; and
- (b) record particulars of the amendment in the appropriate register; and
- (c) give the applicant a copy of the amended environmental authority.

(2) The amendment takes effect on the day of the amendment or a later day stated in the amended environmental authority.

(3) If the administering authority decides to refuse the application, it must, within 10 business days after the decision is made, give the applicant an information notice about the decision.

PART 9—TRANSFER OF AUTHORITIES*Division 1—Transfer applications***Transfer only by approval**

259.(1) An environmental authority (mining activities) may be transferred to a person who does not already hold the environmental authority only if—

- (a) an application for the transfer has been made under this division (a **“transfer application”**); and
- (b) the administering authority has approved the transfer.

(2) However, despite subsection (1), if 2 or more persons jointly hold an environmental authority, it may be amended under part 8 or 12⁷³ to remove 1 or more of the holders from the authority if, were the amendment to be made, there would be at least 1 holder of the authority.

(3) Despite subsection (1), an environmental authority (prospecting) can not be transferred.

Requirements for transfer application

260.(1) A transfer application must be—

- (a) made to the administering authority in the approved form; and
- (b) made by the following (the **“applicants”**)—
 - (i) the holder of the environmental authority;
 - (ii) the proposed transferee; and
- (c) supported by enough information to enable the administering authority to decide the application; and
- (d) accompanied by the fee prescribed under a regulation.

(2) The applicants may, together with the transfer application, also make an amendment application for the environmental authority.

(3) Part 8⁷⁴ applies, with necessary changes, to the amendment application as if a reference to the environmental authority holder were a reference to the applicants.

(4) However, the amendment application must not be granted before the transfer application is granted or if the transfer application is refused.

⁷³ Part 8 (Amendment of authorities by application) or 12 (Amendment, cancellation or suspension by administering authority)

⁷⁴ Part 8 (Amendment of authorities by application)

Audit statement may be required

261.(1) The administering authority may, within 20 business days after the transfer application is made, require the applicants to give it an audit statement for the relevant environmental authority.

(2) The audit statement must—

- (a) be made by or for the environmental authority holder; and
- (b) state the extent to which activities carried out under each relevant mining tenement have complied with the conditions of the environmental authority.

Division 2—Processing transfer applications**Deciding application**

262.(1) The administering authority must, within the later of the following periods to end, consider each transfer application and decide to approve or refuse the transfer—

- (a) if the applicants have been required to give an audit statement for the relevant environmental authority—20 business days after the giving of the audit statement;
- (b) otherwise—3 months after the application is received by the administering authority.

(2) The authority must, in making the decision, consider the following—

- (a) the standard criteria;
- (b) the proposed transferee's ability to comply with the relevant standard environmental conditions;
- (c) any suitability report obtained for the application;
- (d) whether the proposed transferee has, under the Mineral Resources Act, applied to become the holder of each relevant mining tenement;
- (e) the status of any application under the Mineral Resources Act for,

- or relating to, each relevant mining tenement;
- (f) another matter prescribed under a regulation.

Refusal on ground that amendment required

263. Without limiting section 262, the administering authority may refuse the application if—

- (a) the applicants did not, under 260(2), apply to amend the environmental authority; and
- (b) the administering authority is satisfied that, if the application is granted, a ground for amending the environmental authority under section 292(2) would exist.⁷⁵

Steps after making decision

264.(1) If the administering authority decides to approve a transfer, it must—

- (a) amend the relevant environmental authority to give effect to the transfer within 10 business days after the decision is made; and
- (b) record particulars of the transfer in the appropriate register and give the transferee a copy of the amended environmental authority within 10 business days after the later of the following events happens—
- (i) the making of the decision;
- (ii) the transferee becomes the holder of each relevant mining tenement for the environmental authority;
- (iii) if a person, other than the transferee, holds a relevant mining tenement—the person ceases to be a holder of the tenement.

(2) If the administering authority decides to refuse a transfer, it must, within 10 business days after the decision is made, give the applicants an information notice about the decision.

⁷⁵ Sections 260 (Requirements for transfer application) and 292 (Other amendments—non-standard authorities)

Effect of plan of operations and environmental management documents after transfer

265. The environmental management documents and any submitted plan of operations for an environmental authority (mining activities) apply to the holder of a transferred authority to the extent they apply to the relevant mining activities under the transferred authority.

Notice to owners of transfer

266.(1) This section applies if a transferee is given a copy of the amended environmental authority under section 264.

(2) The transferee must within 10 business days give each owner of the land to which the environmental authority relates written notice that the authority has been transferred to the transferee.

Maximum penalty for subsection (2)—10 penalty units.

PART 10—SURRENDER OF AUTHORITIES*Division 1—General provisions for surrender***Prospecting permit can not be surrendered**

267. This part does not apply for an environmental authority (prospecting).

Surrender only by approval

268.(1) An environmental authority (mining activities) may be surrendered only if—

- (a) an application for the surrender has been made under division 2 (a “**surrender application**”); and
- (b) the administering authority has approved the surrender.

(2) A holder of an environmental authority (mining activities) must make

a surrender application if required under section 270.

(3) The holder may make a surrender application at any other time.

Surrender may be partial

269.(1) The administering authority may approve a surrender application for a part of an environmental authority (mining activities).

(2) Without limiting sections 277 and 278, the administering authority may refuse the application if—

- (a) the applicant has not made an amendment application for the part of the environmental authority not sought to be surrendered; and
- (b) the administering authority considers that it is appropriate to amend the environmental authority to reflect the partial surrender.

When surrender application required

270.(1) This section applies to the holder of an environmental authority (mining activities).

(2) If a relevant mining tenement is cancelled, the holder must, within 30 days, make a surrender application for each part of the authority relating to the tenement.

(3) The holder must make a surrender application for each part of the authority relating to a relevant mining tenement within the period prescribed under a regulation before the tenement is, according to its conditions, to end other than by cancellation.

(4) However, subsection (3) does not apply if, before the prescribed period starts—

- (a) the mining tenement is, under the Mineral Resources Act—

- (i) renewed or continued in force;⁷⁶ or
 - (ii) consolidated with another mining tenement; or
- (b) a replacement environmental authority is issued to the holder.

Notice by administering authority to make surrender application

271.(1) This section applies if—

- (a) section 270(2) or (3) applies to the holder of an environmental authority (mining activities); and
- (b) the holder has not complied with the subsection.

(2) The administering authority may, by written notice (a “**surrender notice**”), require the holder to make a surrender application for the environmental authority within a stated a stated period of at least 10 business days.

(3) The surrender notice must be accompanied by, or include, an information notice about the authority’s decisions to make the requirement and to fix the stated period.

Failure to comply with surrender notice

272. A person to whom a surrender notice has been given must comply with the notice unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

⁷⁶ See the Mineral Resources Act, sections 93(5) (Renewal of mining claim), 147(2) (Renewal of exploration permit), 197(4) (Renewal of mineral development licence), 286(7) (Renewal of mining lease) and parts 14, division 5 (Renewals of mining claims), 15, division 5 (Renewals of exploration permits), 16, division 5 (Renewals of mineral development licences) and 17, division 5 (Renewals of mining leases).

Division 2—Surrender applications***Subdivision 1—Requirements for surrender applications*****Requirements**

273.(1) A surrender application must be—

- (a) in the approved form; and
- (b) supported by enough information to allow the administering authority to decide the application; and
- (c) accompanied by—
 - (i) a final rehabilitation report for the environmental authority; and
 - (ii) an audit statement for the environmental authority; and
 - (iii) the fee prescribed under a regulation.

(2) The audit statement must—

- (a) be made by or for the environmental authority holder; and
- (b) state—
 - (i) the extent to which activities carried out under the environmental authority have complied with the conditions of the authority; and
 - (ii) the extent to which the final rehabilitation report is accurate.

Subdivision 2—Final rehabilitation reports**Content requirements for report**

274. A final rehabilitation report must—

- (a) be in the approved form; and
- (b) state the extent to which activities carried out under each relevant mining tenement to which the surrender application relates have been consistent with the environmental protection commitments

- under any relevant environmental management document; and
- (c) include enough information to allow the administering authority to decide whether—
 - (i) the conditions of the environmental authority (mining activities) have been complied with; and
 - (ii) the land on which each relevant mining activity has been carried out has been satisfactorily rehabilitated; and
 - (d) describe any ongoing environmental management needs for the land; and
 - (e) include another matter prescribed under a regulation.

Amending report

275.(1) This section applies if a person has submitted a final rehabilitation report (the “**original report**”).

(2) The person may amend the original report at any time before the administering authority decides the application.

(3) However, an amendment may be made only by giving the authority written notice stating the amendment (an “**FRR amendment notice**”).

(4) A FRR amendment notice must be accompanied by the fee prescribed under a regulation.

(5) The submitted final rehabilitation report is taken to be the original report, as amended from time to time by any FRR amendment notice given for the original report.

FRR assessment report may be given

276.(1) The administering authority may give the person who submitted a final rehabilitation report an assessment report (an “**FRR assessment report**”) about the final rehabilitation report.

(2) However, the FRR assessment report must be given within the period prescribed under a regulation.

Subdivision 3—Processing surrender applications**Deciding application**

277. The administering authority must consider each surrender application and decide, within the period prescribed under a regulation, to either approve or refuse the surrender.

Criteria for decision

278.(1) In deciding a surrender application, the administering authority must—

- (a) comply with any relevant EPP requirement; and
- (b) subject to paragraph (a), consider the following—
 - (i) the standard criteria;
 - (ii) the final rehabilitation report for the environmental authority;
 - (iii) the audit statement for the environmental authority, or part of the environmental authority, the subject of the application;
 - (iv) any relevant FRR assessment report;
 - (v) another matter prescribed under an environmental protection policy or a regulation.

(2) The authority must not grant the application unless—

- (a) it is satisfied the conditions of the environmental authority (mining activities) have been complied with; or
- (b) it is satisfied the land on which each relevant mining activity has been carried out has been satisfactorily rehabilitated; or
- (c) it has approved an environmental management program and it is satisfied the land will be satisfactorily rehabilitated under the program; or
- (d) a suitability statement has been given for the land and—
 - (i) the land has been removed from the environmental management register; or
 - (ii) a site management plan has been approved for the land; or

- (e) if a regulation has prescribed another circumstance for this section—the administering authority is satisfied of the circumstance.

Steps after making decision

279. If the administering authority decides a surrender application, it must, within 10 business days after the decision is made—

- (a) if the decision was to approve the application—
 - (i) record particulars of the surrender in the appropriate register; and
 - (ii) give the applicant written notice of the decision; or
- (b) if the decision was to refuse the application—give the applicant an information notice about the decision.

PART 11—ENVIRONMENTAL AUDITS FOR MINING ACTIVITIES

Division 1—Audit requirements

Administering authority may require environmental audit

280.(1) The administering authority may, by written notice (an “**audit notice**”) require the holder of an environmental authority (mining activities) to—

- (a) conduct or commission an environmental audit about a stated matter concerning a relevant mining activity; and

Examples of ‘matters’ for paragraph (a)—

1. Whether the conditions of the environmental authority have been complied with.
2. The environmental harm a mining project is causing compared with the environmental harm authorised under the environmental

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authority or anticipated under relevant environmental management documents.

3. Whether a plan of operations for an environmental authority (mining lease) complies with the conditions of the environmental authority.
4. The accuracy of a final rehabilitation report given to the administering authority by the holder.

(b) give the authority an environmental audit report about the audit.

(2) However, the audit notice must not be given unless the authority is reasonably satisfied the audit is necessary or desirable.

(3) The audit notice must state the following—

- (a) the holder's name;
- (b) the environmental authority (mining activities);
- (c) the matter for which the environmental audit is required;
- (d) that the holder must, within a stated reasonable period—
 - (i) conduct or commission the environmental audit; and
 - (ii) give the administering authority an environmental audit report about the audit.

(4) Also, the audit notice must be accompanied by or include an information notice about the decision to give the notice and to fix the stated period.

Failure to comply with audit notice

281. A person to whom an audit notice has been given must comply with the notice unless the person has a reasonable excuse.

Maximum penalty—300 penalty units.

Costs of complying with audit notice

282. A person to whom an audit notice has been given must pay any costs incurred by the person in relation to complying with the notice.

Division 2—Audits by administering authority**Administering authority may conduct environmental audit**

283.(1) The administering authority may decide to—

- (a) conduct or commission an environmental audit about a stated matter concerning an environmental authority (mining activities); or
- (b) prepare an environmental audit report about the audit.

(2) However, the authority may make a decision under subsection (1) only if it is reasonably satisfied the audit is necessary or desirable.

(3) If the authority makes a decision under subsection (1), it must give the environmental authority holder an information notice about the decision.

(4) The authority must, within 10 business days after preparing an environmental audit report, give the environmental authority holder a copy of it.

Administering authority's costs of environmental audit or report

284.(1) This section applies if the administering authority has under section 283, incurred costs in conducting or commissioning an environmental audit or preparing an environmental audit report.

(2) The holder of the relevant environmental authority (mining activities) must pay the amount of the costs if—

- (a) the costs were properly and reasonably incurred; and
- (b) the administering authority has asked the holder to pay the amount.

(3) The administering authority may recover the amount as a debt.

Division 3—Auditors and conduct of environmental audits**Appointment of auditors**

285.(1) The administering authority may appoint an individual as an auditor if it is satisfied the individual has the qualifications prescribed under a regulation.

(2) Subsection (1) does not limit the issues the authority may consider when deciding whether to appoint someone as an auditor.

Appointment conditions and term

286.(1) The appointment of an auditor is subject to the conditions stated in the auditor's instrument of appointment.

(2) The conditions may, for example, limit the environmental audits the auditor may conduct to a stated type of environmental audit.

(3) The auditor must comply with the conditions, unless the auditor has a reasonable excuse for not complying with them.

Maximum penalty—100 penalty units.

(4) If the instrument provides for a term of appointment, the auditor ceases to hold office at the end of the term.

Who may conduct environmental audit

287.(1) An environmental audit may be conducted only by—

- (a) the administering authority; or
- (b) an auditor whose instrument of appointment allows the auditor to conduct the audit.

(2) Despite subsection (1)(b), a person must not conduct an environmental audit—

- (a) if a regulation disqualifies or prohibits the person from conducting the audit; or
- (b) in a circumstance prescribed under a regulation.

Maximum penalty for subsection (2)—100 penalty units.

Impersonation of auditor

288. A person must not pretend to be an auditor.

Maximum penalty—100 penalty units.

*Division 4—Miscellaneous provisions***False or misleading information about environmental audits**

289.(1) A person must not state anything, or give a document, to an auditor who is conducting an environmental audit that the person knows is false or misleading in a material particular.

Maximum penalty—165 penalty units.

(2) An auditor must not make an environmental audit report that the auditor knows is false or misleading in a material particular.

Maximum penalty—165 penalty units.

(3) It is enough for a complaint for an offence against this section to state the statement or document was ‘false or misleading’ to the auditor’s or person’s knowledge, without specifying which.

**PART 12—AMENDMENT, CANCELLATION OR
SUSPENSION BY ADMINISTERING AUTHORITY***Division 1—Conditions for amendment, cancellation or suspension**Subdivision 1—Amendments***Corrections**

290. The administering authority may amend an environmental authority (mining activities) to correct a clerical or formal error (a “**correction**”) if—

- (a) the amendment does not adversely affect the interests of the

- environmental authority holder or anyone else; and
- (b) written notice of the amendment has been given to the holder.

Other amendments—standard authorities

291.(1) The administering authority may amend a standard environmental authority (mining activities) at any time if—

- (a) either—
- (i) it considers the amendment necessary or desirable and that, if the amendment were to be made, each relevant mining activity would still be a standard mining activity; or
- (ii) the amendment is to reflect a change in the relevant standard environmental conditions; and
- (b) the procedure under division 2 is followed or the holder has agreed in writing to the amendment.

(2) However, in making the decision, the administering authority must consider the following—

- (a) the standard criteria;
- (b) the applicant's ability to comply with the relevant standard environmental conditions;
- (c) any suitability report obtained for the application.

Other amendments—non-standard authorities

292.(1) The administering authority may amend a non-standard environmental authority (mining activities) at any time if—

- (a) it considers the amendment necessary or desirable; and
- (b) the procedure under division 2 is followed or the holder has agreed in writing to the amendment.

(2) For subsection (1)(b), the grounds are as follows—

- (a) a contravention of this Act by the holder;
- (b) the environmental authority was issued because of a materially false or misleading representation or declaration, made either

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- orally or in writing;
- (c) financial assurance required under a condition of the environmental authority has not been given in the amount or in the form required under the condition;
 - (d) the environmental authority was issued on the basis of a miscalculation of—
 - (i) the environmental values affected or likely to be affected, by a relevant mining activity; or
 - (ii) the quantity or quality of contaminant authorised to be released into the environment; or
 - (iii) the effects of the release of a quantity or quality of contaminant authorised to be released into the environment;
 - (e) a change in the way in which, or the place where, contaminants are, or are likely to be, released into the environment;
 - (f) the approval of an environmental protection policy or the approval of the amendment of an environmental protection policy;
 - (g) an environmental audit or report, or an audit statement given under this chapter;
 - (h) an environmental audit or report given under chapter 7;⁷⁷
 - (i) a final rehabilitation report;
 - (j) an annual return required under this Act;
 - (k) for an environmental authority (mining lease), a change provided for, or other matter stated in, an amendment to or replacement of the plan of operations for the environmental authority;
 - (l) a significant change in the way in which, or the extent to which, an activity under the environmental authority is being carried out;

Example of 'significant change' for paragraph (l)—

The EMOS for an environmental authority (mining lease) application was based on a particular method for removing contaminants from a waste stream for a relevant mining activity. The conditions for the authority were fixed on the basis of the EMOS. The authority is

⁷⁷ Chapter 7 (Environmental management)

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transferred and the transferee changes the method.

- (m) the amount or form of any financial assurance given or required for the environmental authority is no longer appropriate because of—
 - (i) a change in the degree of environmental harm caused, or that may be caused, by a relevant mining activity; or
 - (ii) the environmental record of the authority holder;
- (n) the amendment is necessary to prevent environmental harm not already authorised under the environmental authority;
- (o) an amendment proposed under an amendment application;
- (p) another circumstance prescribed under a regulation.

(3) Subsection (2)(1) applies even if an environmental management document or plan of operations mentions or provides for the change.

*Subdivision 2—Cancellation or suspension***Conditions**

293.(1) The administering authority may cancel or suspend an environmental authority (mining activities) if—

- (a) a replacement environmental authority is issued for the environmental authority; or
- (b) an event mentioned in subsection (2) has happened and the procedure under division 2 is followed.

(2) For subsection (1)(b), the events are as follows—

- (a) the environmental authority was issued because of a materially false or misleading representation or declaration, made either orally or in writing;
- (b) financial assurance required under a condition of the environmental authority has not been given in the amount or in the form required under the condition;
- (c) the environmental authority holder is, after the issue of the environmental authority, convicted of an environmental offence;

- (d) after the environmental authority has taken effect⁷⁸—
 - (i) the environmental authority holder no longer holds any relevant mining tenement; or
 - (ii) a person, other than the environmental authority holder, becomes a holder of a relevant mining tenement;
- (e) the holder has been given an annual notice, audit notice or surrender notice and the notice has not been complied with.

Division 2—Procedure for amendment without agreement or for cancellation or suspension

Application of div 2

294. This division applies if the administering authority proposes to—

- (a) amend an environmental authority (mining activities), other than—
 - (i) to make a correction; or
 - (ii) with the written agreement of the environmental authority holder; or
- (b) cancel or suspend an environmental authority.

Notice of proposed action

295.(1) The administering authority must give the environmental authority holder a written notice stating the following—

- (a) the action (the “**proposed action**”) the administering authority proposes taking under this division;
- (b) the grounds for the proposed action;
- (c) the facts and circumstances that are the basis for the grounds;
- (d) if the proposed action is to amend the environmental

⁷⁸ For when an environmental authority takes effect, see section 303 (Restrictions on authority or transfer taking effect).

authority—the proposed amendment;

- (e) if the proposed action is to suspend the environmental authority—the proposed suspension period;
- (f) that the holder may make, within a stated period, written representations to show why the proposed action should not be taken.

(2) The stated period must end at least 20 business days after the holder is given the proposed action notice.

(3) For subsection (1)(e), the proposed suspension period may be fixed by reference to a stated event.

Example for subsection (3)—

If a ground on which the proposed action is to be taken is that financial assurance required under a condition of the environmental authority has not been given, the proposed suspension period may be stated as the period ending when the financial assurance is given.

Considering representations

296. The administering authority must consider any written representation made within the period stated in the notice under section 295 by the environmental authority holder.

Decision on proposed action

297.(1) If, after complying with section 296, the administering authority still believes a ground exists to take the proposed action, it may—

- (a) if the proposed action was to amend the environmental authority in a stated way—make the amendment; or
- (b) if the proposed action was to suspend the environmental authority for a stated period—suspend the environmental authority for no longer than the proposed suspension period; or
- (c) if the proposed action was to cancel the environmental authority—either cancel the environmental authority or suspend it for a fixed period.

(2) The decision under subsection (1) is called the “**proposed action**”

decision”.

(3) If the administering authority at any time decides not to take the proposed action, it must promptly give the holder written notice of the decision.

Notice of proposed action decision

298.(1) The administering authority must, within 10 business days after making the proposed action decision—

- (a) for a decision to amend a standard environmental authority (mining activities)—give the environmental authority holder a written notice stating the decision and the reasons for it; or
- (b) for a decision other than to amend a standard environmental authority (mining activities)—give the environmental authority holder an information notice about the decision.

(2) The decision takes effect on the later of the following—

- (a) the day the notice is given to the holder;
- (b) a later day of effect stated in the notice.

(3) However, if the decision was to cancel or suspend the environmental authority because of the conviction of the holder for an offence, the cancellation or suspension—

- (a) does not take effect until—
 - (i) the period to appeal against the conviction ends; and
 - (ii) if the appeal is made against the conviction—the appeal is finally decided or is otherwise ended; and
- (b) has no effect if the conviction is quashed on appeal.

Division 3—Steps after making decision**Steps for corrections**

299. If the administering authority amends an environmental authority to make a correction, it must, within 10 business days after giving notice of the

correction under section 290(b)—

- (a) amend the environmental authority to give effect to the amendment; and
- (b) record particulars of the amendment in the appropriate register.

Steps for amendment by agreement

300. If, under division 1, subdivision 1, the administering authority amends an environmental authority with the environmental authority holder's agreement, it must, within 10 business days—

- (a) amend the environmental authority to give effect to the amendment; and
- (b) record particulars of the amendment in the appropriate register; and
- (c) give the holder a copy of the amended environmental authority.

Steps for amendment without agreement or for cancellation or suspension

301.(1) This section applies if the proposed action decision is to take action and the decision has taken effect.

(2) The administering authority must, as soon as practicable—

- (a) take the action; and
- (b) record particulars of the action in the appropriate register.

(3) If the action is suspension of the environmental authority—

- (a) the particulars must state when the suspension period starts and ends; and
- (b) the suspension ends when the suspension period is stated to end.

(4) If the action is to amend the environmental authority, the administering authority must also give the environmental authority holder a copy of the amended environmental authority as soon as practicable.

PART 13—MISCELLANEOUS PROVISIONS

Division 1—Advice from MRA chief executive

Requirement to seek advice from MRA chief executive

302.(1) The administering authority must, before it takes any of the following steps, seek advice from the chief executive of the MRA department—

- (a) make a decision to refuse a surrender or transfer application, unless a proposed reason for the refusal is that a relevant mining tenement has not been assigned or surrendered under the Mineral Resources Act;
- (b) make a proposed action decision if the holder of the relevant environmental authority has not agreed in writing to the decision;
- (c) make another decision under this part about a non-standard application or a non-standard environmental authority (mining activities), to which decision the applicant or authority holder has not agreed in writing;
- (d) give a draft environmental authority for an environmental authority (mining lease) application if it is a non-standard application.

(2) The advice may be sought in the way the administering authority considers appropriate.

(3) The advice sought may be given only within the time required under this chapter for the administering authority to take the step.

(4) A contravention of this section does not invalidate the decision or the environmental authority (mining activities) to which it relates.

Division 2—When authorities or transfers take effect

Restrictions on environmental authority or transfer taking effect

303.(1) This section applies if an environmental authority (mining

activities) is, or must be—

- (a) issued under this chapter; or
- (b) issued or amended to give effect to a transfer under this chapter.

(2) If the environmental authority states a day or an event for the authority or transfer to take effect, the authority or transfer takes effect on the stated day or when the stated event happens.

(3) If no day or event is stated, the environmental authority or transfer takes effect on the later of the following happens—

- (a) the granting, under the Mineral Resources Act, of each relevant mining tenement;
- (b) each environmental authority holder has become a holder of a relevant mining tenement;
- (c) if a person, other than an environmental authority holder, is a holder of any relevant mining tenement—the person ceases to be a holder of the tenement;
- (d) if the environmental authority states a day or an event for the authority or transfer to take effect—the stated day or when the stated event happens.

Division 3—General provisions for applications and conditions

Grounds for refusing application for or to transfer environmental authority

304.(1) A refusal decision may be made for an application for, or to transfer, an environmental authority (mining activities) if—

- (a) the decision-maker is satisfied the proposed holder is not a suitable person to hold an environmental authority; or
- (b) a disqualifying event has happened in relation to the proposed holder or another person of whom the person is a partner; or
- (c) if the proposed holder is a corporation, a disqualifying event has happened in relation to—
 - (i) any of its executive officers; or

- (ii) another corporation of which any of its executive officers is, or has been, an executive officer.

(2) In deciding whether a proposed holder is suitable person to hold an environmental authority, the decision-maker must consider all relevant matters, including, for example—

- (a) the proposed holder's environmental record; and
- (b) the proposed holder's ability to comply with any conditions or proposed conditions of the environmental authority or proposed environmental authority.

(3) In this section—

“refusal decision” means—

- (a) a decision by the administering authority under this chapter to refuse the application or transfer; or
- (b) an objections decision recommending the application be refused; or
- (c) a Minister's decision that the application be refused.⁷⁹

Conditions that may be made

305.(1) This section applies for the doing or making of any of the following (a **“relevant act”**)—

- (a) imposing or amending a condition for an environmental authority (mining activities);
- (b) deciding a proposed condition for a draft environmental authority;
- (c) an objections decision recommending a condition;
- (d) the Minister, in making the Minister's decision for an application, deciding to impose a condition;
- (e) the granting, or the amendment, cancellation, surrender, suspension or transfer, of or other dealing with, an environmental authority (mining activities);

⁷⁹ See chapter 12, part 2, division 3 (Investigating suitability).

- (f) recommending, under the State Development Act, section 29Y,⁸⁰ a condition that must be attached to a draft environmental authority.

(2) A relevant act may—

- (a) require the environmental authority holder to do all or any of the following—
- (i) install and operate stated plant or equipment in a stated way within a stated period;
 - (ii) take stated measures to minimise the likelihood of environmental harm being caused;
 - (iii) carry out and report on a stated monitoring program;
 - (iv) prepare and carry out an environmental management program;
 - (v) give relevant information reasonably required by the administering authority for the administration or enforcement of this Act;
 - (vi) carry out or report about stated rehabilitation or remediation work relating to the environmentally relevant activity the subject of the environmental authority; or
- (b) prohibit the holder from changing, replacing or operating any plant or equipment installed in the licensed place if the change, replacement or operation increases, or is likely to substantially increase, the risk of environmental harm; or
- (c) include a condition under section 364⁸¹ requiring the giving of financial assurance; or
- (d) provide that the environmental authority ceases, or ceases to have effect—
- (i) on a stated day; or
 - (ii) when a stated period ends; or

⁸⁰ State Development Act, section 29Y (Application of Coordinator-General's report to other approval process)

⁸¹ Section 364 (When financial assurance may be required)

- (iii) on the happening of a stated event; or
- (iv) if a stated event has not happened on or before a stated day.

Example of a 'stated event'—

The granting of a relevant mining tenement.

(3) To remove any doubt, it is declared that a condition may be imposed even if it imposes an obligation on the environmental authority holder that continues to apply after the authority has ended or ceased to have effect.

Example for subsection (3)—

A condition may be about the following—

1. Rehabilitation of the land to which the authority relates after the authority has ended;
2. A final rehabilitation report or site management plan for the land.

(4) Subsection (2) does not limit the conditions that may be made by a relevant act.

Additional conditions override standard environmental conditions

306.(1) This section applies if—

- (a) an environmental authority (mining activities) contains standard environmental conditions and an additional condition; and
- (b) there is any inconsistency between a standard environmental condition and the additional condition.

(2) The additional condition prevails to the extent of the inconsistency.

Division 4—Principal holder of authority

Application of div 4

307. This division applies if 2 or more persons jointly hold an environmental authority (mining activities).

Appointment of principal holder

308.(1) A person is taken to have been appointed as the principal holder of the environmental authority if—

- (a) immediately before the issue of the environmental authority, the person held appointment under section 159(1)⁸² as the principal applicant for the application for the environmental authority; and
- (b) the person's appointment has not been cancelled under that section.

(2) The holders of the environmental authority may, by a signed notice from all of them to the administering authority—

- (a) appoint 1 of them as the principal holder of the environmental authority; or
- (b) cancel the appointment of a principal holder.

Effect of appointment

309. If a holder of the environmental authority holds appointment as its principal holder—

- (a) the principal holder may, for all holders of the environmental authority, give or submit to the administering authority a notice or other document relating to the environmental authority; and
- (b) the administering authority may—
 - (i) give a notice or other document relating to the environmental authority to all the holders by giving it to the principal holder; or
 - (ii) make a requirement under this Act relating to the environmental authority of all the holders by making the requirement of the principal holder.

⁸² Section 159 (Appointment of principal applicant)

Division 5—Death of authority holder**Personal representative becomes the holder**

310. If the holder of an environmental authority (mining activities) dies, the personal representative of the holder's estate is taken to be the holder of the authority.

CHAPTER 6—GENERAL PROVISIONS ABOUT ENVIRONMENTAL AUTHORITIES**PART 1—INTEGRATED AUTHORITIES****Integrated authority may be issued**

311.(1) The administering authority may accept a single application for an environmental authority from an applicant for different activities carried out by the applicant or activities carried out by the applicant at different places.

(2) If the authority grants the application, it may issue 1 or more environmental authorities, for the activities.

(3) To remove any doubt it is declared that subsections (1) and (2) apply for any type or types of environmental authority under chapter 4 or 5,⁸³ in any combination.

(4) An environmental authority issued under subsection (2) is called an “**integrated authority**”.

Requirements for integrated authority application

312.(1) A person may, by a single application, apply for an integrated

⁸³ Chapters 4 (Development approvals and environmental authorities other than for mining activities) and 5 (Environmental authorities for mining activities)

authority.

(2) However—

- (a) the application must be accompanied by a submission for an integrated environmental management system (an “**IEMS submission**”) for the activities; and
- (b) any requirements under chapter 4 or 5 applying to the application must be complied with.

IEMS submission—content requirements

313.(1) An IEMS submission must address the following matters about carrying out the activities the subject of the application—

- (a) the monitoring of releases of contaminants into the environment and an environmental assessment of the releases;
- (b) staff training and awareness of environmental issues;
- (c) the conduct of environmental and energy audits;
- (d) waste prevention, treatment and disposal;
- (e) a program for continuous improvement;
- (f) reporting arrangements on the effectiveness of the environmental management of the activities.

(2) The submission may address a matter mentioned in subsection (1) by reference to a relevant EIS or environmental management document.

Requirements for integrated authority

314. An integrated authority must state the following—

- (a) each environmentally relevant activity for which the authority is given;
- (b) each type of environmental authority that forms the integrated authority;
- (c) each environmentally relevant activity for which each stated type is given;
- (d) the conditions applying to each stated type.

Effect of issue of integrated authority

315. Each stated type of environmental authority that forms an integrated authority is taken to be an environmental authority of that type.

PART 2—MISCELLANEOUS PROVISIONS**Annual fee and return**

316.(1) This section applies for an environmental authority, other than—

- (a) a level 1 or 2 approval; or
- (b) a standard environmental authority (mining activities).

(2) At least 30 days before each anniversary day for the environmental authority, the administering authority must give the environmental authority holder written notice (an “**annual notice**”) requiring the holder to—

- (a) pay the authority the appropriate annual fee, other than for a type of environmental authority or in a circumstance prescribed under a regulation for this paragraph; and
- (b) give the authority an annual return in the approved form.

(3) An annual notice must state that if the holder does not comply with the notice, the environmental authority may be cancelled or suspended.⁸⁴

(4) Also, if the annual fee is not paid, the administering authority may recover it as a debt.

Reference to environmental authority includes its conditions

317. A reference in this Act to an environmental authority or a proposed environmental authority includes, if the context permits, a reference to the conditions of the authority or proposed authority.

⁸⁴ See sections 131 and 293 (Conditions).

Effect of Integrated Planning Act, s 6.1.44

318. The power under the Integrated Planning Act, section 6.1.44⁸⁵ to change or cancel a condition of a development approval for an environmentally relevant activity does not limit a power under this Act to amend, cancel or suspend an environmental authority.

CHAPTER 7—ENVIRONMENTAL MANAGEMENT

PART 1—ENVIRONMENTAL DUTIES

General environmental duty

319.(1) A person must not carry out any activity that causes, or is likely to cause, environmental harm unless the person takes all reasonable and practicable measures to prevent or minimise the harm (the “**general environmental duty**”).⁸⁶

(2) In deciding the measures required to be taken under subsection (1), regard must be had to, for example—

- (a) the nature of the harm or potential harm; and
- (b) the sensitivity of the receiving environment; and
- (c) the current state of technical knowledge for the activity; and
- (d) the likelihood of successful application of the different measures that might be taken; and
- (e) the financial implications of the different measures as they would relate to the type of activity.

⁸⁵ Integrated Planning Act, section 6.1.44 (Conditions may be changed or cancelled by assessment manager or concurrence agency in certain circumstances)

⁸⁶ See section 24(3) (Effect of Act on other rights, civil remedies etc.)

Duty to notify environmental harm

320.(1) This section applies to a person who, while carrying out an activity (the “**primary activity**”), becomes aware that serious or material environmental harm is caused or threatened by the person’s or someone else’s act or omission in carrying out the primary activity or another activity being carried out in association with the primary activity.

(2) However, this section does not apply if the harm is authorised to be caused under—

- (a) an environmental protection policy; or
- (b) an environmental management program; or
- (c) an environmental protection order; or
- (d) an environmental authority; or
- (e) a development condition of a development approval; or
- (f) an emergency direction.

(3) As soon as reasonably practicable after becoming aware of the event involving the harm, the person must—

- (a) if the person is carrying out the primary activity during the person’s employment or engagement by, or as the agent of, someone else (the “**employer**”)—
 - (i) tell the employer of the event, its nature and the circumstances in which it happened; or
 - (ii) if the employer cannot be contacted—give written notice to the administering authority of the event, its nature and the circumstances in which it happened; or
- (b) if paragraph (a) does not apply to the person—give written notice to the administering authority of the event, its nature and the circumstances in which it happened.

(4) If subsection (3)(a)(i) applies, the employer must immediately give written notice to the administering authority of the event, its nature and the circumstances in which it happened.

(5) A person must not, without reasonable excuse, fail to comply with subsection (3) or (4).

Maximum penalty—100 penalty units.

(6) It is not a reasonable excuse for a person to fail to give notice to the administering authority of the circumstances involving the harm on the ground that the notice, or the giving of the notice, might tend to incriminate the person.

(7) A notice given by a person is not admissible in evidence against the person (or, if subsection (3)(a) applies, the person or employer) in a prosecution for an offence against this Act constituted by the act or omission that caused or threatened the harm under the notice.

(8) Subsection (7) does not prevent other evidence obtained because of the notice, or the giving of the notice, being admitted in any legal proceeding against the person (or employer).

PART 2—ENVIRONMENTAL EVALUATIONS

What is an environmental evaluation

321. An environmental evaluation is an evaluation of an activity or event to decide—

- (a) the source, cause or extent of environmental harm being caused, or the extent of environmental harm likely to be caused, by the activity or event; and
- (b) the need for an environmental management program for the activity or event.

When environmental audit required

322.(1) If the administering authority is satisfied on reasonable grounds that—

- (a) the holder of, or a person acting under, an environmental authority, other than a level 1 or 2 approval, is or has been, contravening a condition of the authority; or
- (b) a person is, or has been, contravening a development condition of

a development approval; or

- (c) a person is, or has been, contravening an environmental protection policy or management program;

the authority may require the person to conduct or commission an audit (an “**environmental audit**”) of the matter and submit a report on the audit to it.

(2) The authority must, within 10 days after deciding to make the requirement, give the person an information notice about the decision.

(3) The person must comply with the requirement.

Maximum penalty—100 penalty units.

When environmental investigation required

323.(1) If the administering authority is satisfied on reasonable grounds—

- (a) an event has happened causing environmental harm while an activity was being carried out; or
- (b) an activity or proposed activity is causing, or is likely to cause environmental harm;

the authority may require the person who has carried out, is carrying out or is proposing to carry out the activity to conduct or commission an investigation (an “**environmental investigation**”) and submit a report on the investigation to it.

(2) The authority must, within 10 days after deciding to make the requirement, give the person an information notice about the decision.

(3) The person must comply with the requirement.

Maximum penalty—100 penalty units.

(4) This section does not apply if the administering authority requires an environmental audit for the event or activity.

(5) In this section—

“**activity**” includes rehabilitation or remediation work.

Notice to conduct or commission environmental evaluation

324.(1) A requirement to conduct or commission an environmental evaluation must be made by written notice.

(2) The notice must—

- (a) state the grounds on which the requirement is made; and
- (b) outline the facts and circumstances forming the basis for the grounds; and
- (c) state the relevant matters for the evaluation; and
- (d) state the day (at least a reasonable period after the notice is given) by which an environmental report must be submitted to the administering authority.

Declarations to accompany report

325.(1) An environmental report submitted to the administering authority must be accompanied by a statutory declaration by the recipient and the person who carried out the environmental evaluation.

(2) The recipient's declaration must be made—

- (a) if the recipient is an individual—by the recipient; or
- (b) if the recipient is a corporation—by an executive officer of the corporation.

(3) The recipient's declaration must state that the recipient—

- (a) has not knowingly given any false or misleading information to the person who carried out the environmental evaluation; and
- (b) has given all relevant information to the person who carried out the environmental evaluation.

(4) A declaration by the person who carried out the environmental evaluation must—

- (a) state his or her qualifications and experience relevant to the evaluation; and
- (b) state that he or she has not knowingly included any false, misleading or incomplete information in the report; and

- (c) state that he or she has not knowingly failed to reveal any relevant information or document to the administering authority; and
- (d) certify that—
 - (i) the report addresses the relevant matters for the evaluation and is factually correct; and
 - (ii) the opinions expressed in it are honestly and reasonably held.

Administering authority to consider and act on environmental reports

326.(1) The administering authority must decide whether or not to accept the environmental report within 28 days after receiving it.

(2) If the administering authority accepts the report, it may do 1 or more of the following—

- (a) require the recipient to prepare and submit an environmental management program to it;
- (b) if the recipient is the holder of an environmental authority—amend the conditions of the authority;
- (c) if the recipient is the holder of a development approval—under section 6.1.44 of the Integrated Planning Act, change or cancel a development condition of the approval;
- (d) serve an environmental protection order on the recipient;
- (e) state the review or appeal details.

(3) If the administering authority is satisfied the report does not adequately address the relevant matters for the environmental evaluation to which the report relates, it may require the recipient to conduct or commission another environmental evaluation and submit a report on the evaluation to it.

(4) If the administering authority is satisfied additional relevant information is required, it may require the recipient to give it the information.

(5) A requirement under subsection (3) or (4) must be made by written notice given to the recipient.

(6) The notice must—

- (a) state the grounds on which the requirement is made; and
- (b) outline the facts and circumstances forming the basis for the grounds; and
- (c) state the relevant matters for the evaluation or the information required; and
- (d) state the day (at least a reasonable period after the notice is given) by which the report or information must be given to the administering authority; and
- (e) state the review or appeal details.

Costs of environmental evaluation and report

327. The recipient must meet the following costs—

- (a) the costs of conducting or commissioning an environmental evaluation and report;
- (b) the costs of giving additional relevant information about the report required by the administering authority.

Extensions of time for decisions on submission of environmental reports

328.(1) The administering authority may decide to extend the time it is required to decide whether or not to accept an environmental report if—

- (a) it has required additional relevant information about the report; or
- (b) it is satisfied there are special circumstances for extending the time.

(2) The authority must, before the extension starts, give the applicant an information notice about the decision to make the extension.

Failure to make decision on environmental report taken to be refusal

329. If the administering authority fails to decide whether or not to accept an environmental report within the time it is required to make a decision on the report, the failure is taken to be a decision by the authority to refuse to accept the report at the end of the time.

PART 3—ENVIRONMENTAL MANAGEMENT PROGRAMS

Division 1—Preliminary

What is an environmental management program

330. An environmental management program is a specific program that, when approved, achieves compliance with this Act for the matters dealt with by the program by—

- (a) reducing environmental harm; or
- (b) detailing the transition to an environmental standard.

Content of program

331. An environmental management program must—

- (a) state the objectives to be achieved and maintained under the program for an activity; and
- (b) state how the objectives are to be achieved, and a timetable to achieve the objectives, taking into account—
 - (i) the best practice environmental management for the activity; and
 - (ii) the risks of environmental harm being caused by the activity; and
- (c) state appropriate performance indicators at intervals of not more than 6 months; and
- (d) make provision for monitoring and reporting compliance with the program.

Division 2—Submission and approval of environmental management programs

Administering authority may require draft program

332.(1) The administering authority may require a person or public authority to prepare and submit to it for approval a draft environmental management program as a condition of an environmental authority, other than a level 1 or 2 approval, or a development approval for which the administering authority is the assessment manager or a concurrence agency.⁸⁷

(2) The administering authority may also require a person or public authority to prepare and submit to it for approval a draft environmental management program if it is satisfied—

- (a) an activity carried out, or proposed to be carried out, by the person or authority is causing, or may cause, unlawful environmental harm; or
- (b) it is not practicable for the person or public authority to comply with an environmental protection policy or regulation on its commencement; or
- (c) that a condition of an environmental authority held by the person or public authority is, or has been, contravened.

(3) A requirement under subsection (1) or (2) must be made by written notice given to the person or public authority.

(4) The notice must state—

- (a) the grounds on which the requirement is made; and
- (b) the matters to be addressed by the program; and
- (c) the period over which the program is to be carried out; and
- (d) the day (at least a reasonable period after the notice is given) by which the program must be prepared and submitted to the

⁸⁷ For development approvals, see section 79 (Conditions of development approval).

- administering authority; and
- (e) the review or appeal details.

Voluntary submission of draft program

333.(1) A person or public authority may, at any time, submit for approval a draft environmental management program to the administering authority for an activity the person or public authority is carrying out or proposes to carry out.

(2) A person or public authority may submit a document under subsection (1) if it substantially complies with the requirements of this part for an environmental management program, even though the document was not originally prepared for this Act.

(3) The document is taken to be a draft environmental management program.

Fee for consideration of draft program

334. A person or public authority that submits a draft environmental management program to an administering authority for approval must pay the authority the fee prescribed by regulation.

Public notice of submission for approval of certain draft programs

335.(1) This section applies if a person or public authority submits for approval a draft environmental management program that states a period longer than 3 years over which the program is to be carried out.

(2) Within 2 days after the application date, the person or public authority must give public notice of the submission by—

- (a) advertisement published in a newspaper circulating generally in the area in which the activity to which the draft program relates is, or is proposed to be, carried out; and
- (b) if the program relates to premises—
- (i) placing a notice on the premises; and
- (ii) serving a notice on the occupiers of all premises adjoining

the premises.

(3) The notice must—

- (a) be in the approved form; and
- (b) invite submissions on the draft program from government departments, public authorities, local governments, land-holders, industry, interested groups and persons and members of the public; and
- (c) state the day (at least 10 business days after compliance with subsection (1)) nominated by the administering authority as the day by which submissions may be made to the authority.

Authority may call conference

336.(1) The administering authority may invite the person or public authority that has submitted a draft environmental management program and another person who has made a submission under section 335 about the program, to a conference to help it in deciding whether or not to approve the program.

(2) The administering authority must give written notice to all persons invited to attend the conference of when and where the conference is to be held.

(3) However, if the administering authority considers it is impracticable to give notice to all persons invited to attend the conference, the authority may give notice of the conference by publishing a notice in the newspapers the authority decides.

(4) The administering authority must endeavour to appoint an independent person to mediate the conference.

Administering authority to consider draft programs

337.(1) The administering authority must decide whether to approve a draft environmental management program submitted to it within 28 days after the application date.

(2) If public notice is required to be given of the submission of the draft

program, the administering authority must be satisfied public notice has been properly given before making a decision.

Criteria for deciding draft program

338.(1) In deciding whether to approve or refuse to approve the draft program or the conditions (if any) of the approval, the administering authority—

- (a) must comply with any applicable environmental protection policy requiring it to—
 - (i) follow stated procedure in evaluating an application for approval of an environmental management program; or
 - (ii) grant or refuse to grant an application for approval of an environmental management program or to impose conditions on an approval of an environmental management program; and
- (b) subject to paragraph (a), must also consider the following—
 - (i) the standard criteria;
 - (ii) additional information given in relation to the draft program;
 - (iii) the views expressed at a conference held in relation to the draft program.

(2) If the draft program is prepared because of a requirement of a development condition of a development approval, the authority may approve the draft program only if it is not inconsistent with other conditions of the approval.

Approval of draft program

339.(1) This section applies if the administering authority—

- (a) approves a draft environmental management program as amended at the request, or with the agreement, of the administering authority; or
- (b) approves a draft program as submitted.

(2) The administering authority must, within 10 days after the approval,

issue and give to the person or public authority that submitted the program a certificate of approval of the program.

(3) The certificate may be issued subject to the conditions the administering authority considers appropriate and remains in force for the period specified in the certificate.

Notice of refusal or conditions

340.(1) This section applies if the administering authority decides to—

- (a) refuse to approve a draft environmental management program; or
- (b) give an approval for a draft environmental management program subject to conditions.

(2) The authority must give the person or public authority that submitted the program an information notice about the decision.

Extensions of time for decisions on submission of draft programs

341.(1) The administering authority may decide to extend the time in which it is required to decide whether or not to approve a draft program if—

- (a) it has required additional information about the draft program; or
- (b) it is satisfied there are special circumstances for extending the time.

(2) The authority must, before the extension starts, give the applicant an information notice about the decision to make the extension.

Substantial compliance with Act may be accepted as compliance

342.(1) This section applies if, under this Act, a person or public authority is required to give public notice of the submission of an environmental management program and the administering authority is not satisfied public notice has been properly given.

(2) The administering authority may consider and decide whether to approve the draft program if it is satisfied there has been substantial compliance with this Act.

Failure to approve draft program taken to be refusal

343. If the administering authority fails to decide whether to approve or refuse an environmental management program within the time it is required to make a decision on the program, the failure is taken to be a decision by the authority to refuse to approve the program at the end of the time.

Division 3—Amendment of approval for environmental management programs**Application**

344.(1) Division 2 (other than section 335(1)) applies, with all necessary changes, to a submission by the holder of an approval for an environmental management program for an environmentally relevant activity to amend the approval.

(2) Without limiting subsection (1), if the holder submits for approval an amendment of the approval that extends the period over which the program is to be carried out to longer than 5 years, section 335(2) and (3) applies to the submission as if the submission were for the approval of a draft environmental management program.

(3) Also, the administering authority may approve the amendment only if it is reasonably satisfied it will not result in increased environmental harm being caused by the carrying out of the activity under the amended approval than the environmental harm that would be caused by carrying out the activity if the approval were not granted.

(4) Without limiting the matters to be considered in deciding the application, the administering authority must have regard to—

- (a) the period under the original approval; and
- (b) the period that remains under the original approval; and
- (c) any change to the period under the original approval; and
- (d) the nature of the risk of environmental harm being caused by the activity.

Division 4—Miscellaneous**Annual return**

345. The holder of an approval of an environmental management program must, within 30 days after each anniversary of the day of approval of the program, give to the administering authority an annual return in the approved form.

Maximum penalty—100 penalty units.

Effect of compliance with program

346.(1) This section applies if an approved environmental management program authorises the holder to do, or not to do, something under the program.

(2) The holder, or a person acting under the approval may do, or not do, the thing under the program despite anything in—

- (a) an environmental authority, other than a level 1 or 2 approval, held by the holder; or
- (b) a development condition of a development approval; or
- (c) an environmental protection policy.

(3) Without limiting subsection (2), the doing, or not doing, of the thing under the program is not a contravention of—

- (a) a condition of an environmental authority, other than a level 1 or 2 approval, held by the holder; or
- (b) an environmental protection policy.

Notice of disposal by holder of program approval

347.(1) This section applies if the holder of an approval of an environmental management program proposes to dispose of the place or business to which the program relates to someone else (the “**buyer**”).

(2) Before agreeing to dispose of the place or business, the holder must give written notice to the buyer of the existence of the program.

Maximum penalty—50 penalty units.

(3) If the holder does not comply with subsection (2), the buyer may rescind the agreement by written notice given to the holder before the completion of the agreement or possession under the agreement, whichever is the earlier.

(4) On rescission of the agreement under subsection (3)—

- (a) a person who was paid amounts by the buyer under the agreement must refund the amounts to the buyer; and
- (b) the buyer must return to the holder any documents about the disposal (other than the buyer's copy of the agreement).

(5) Subsections (3) and (4) have effect despite any other Act or anything to the contrary in the agreement.

(6) Within 14 days after agreeing to dispose of the place or business, the holder must give written notice of the disposal to the administering authority.

Maximum penalty for subsection (6)—50 penalty units.

Notice of ceasing activity by holder of program approval

348. Within 14 days after ceasing to carry out the activity to which an environmental management program relates, the holder of the approval for the program must give written notice of the ceasing the activity to the administering authority.

Maximum penalty—50 penalty units.

Compliance with Act at completion of program

349. The holder of an approval for an environmental management program must achieve full compliance with this Act for the matters dealt with by the program at the end of the period over which the program is carried out.

PART 4—SPECIAL PROVISIONS ABOUT VOLUNTARY SUBMISSION OF ENVIRONMENTAL MANAGEMENT PROGRAMS

Program notice

350.(1) A person may give the administering authority a notice (the “**program notice**”) about an act or omission (the “**relevant event**”) that—

- (a) has caused or threatened environmental harm in the carrying out of an activity by the person; and
- (b) is lawful apart from this Act.

(2) The notice must—

- (a) be in the approved form; and
- (b) give full details of the relevant event; and
- (c) declare the person’s intention to prepare, and submit to the authority an environmental management program for the activity; and
- (d) state the other information prescribed by regulation.

(3) The person may submit with the notice any report, or the results of any analysis, monitoring program, test or examination, carried out by or for the person for the relevant event.

Program notice privileged

351.(1) If the relevant event stated in the program notice constitutes an offence against this Act (the “**original offence**”), the giving of the program notice, the program notice and any documents submitted with it are not admissible in evidence against the person in a prosecution for the original offence.

(2) Subsection (1) does not prevent other evidence obtained because of the giving of the program notice, the program notice or any documents submitted with it being admitted in any legal proceeding against the person.

Authority to act on notice

352.(1) Within 14 days after receiving the program notice, the administering authority must give written notice to the person of—

- (a) its receiving the notice; and
- (b) the day by which a draft environmental management program dealing with the activity must be submitted to it for approval.

(2) The day mentioned in subsection (1)(b) must not be more than 3 months after the administering authority receives the program notice.

(3) This section has effect subject to section 355.

Effect of program notice

353.(1) On receipt of the program notice by the administering authority, the person giving the notice must not be prosecuted for a continuation of the original offence that happens after the authority receives the notice.

(2) Subsection (1) has effect only until whichever of the following happens first—

- (a) the person receives from the administering authority an approval of an environmental management program for the activity;
- (b) the person receives from the administering authority a notice of refusal to approve a draft environmental management program for the activity;
- (c) if the person does not submit a draft environmental management program for the activity to the administering authority by the day stated in the notice given to the person under section 352(1)—the end of the stated day.

(3) The person may be prosecuted for a continuation of the original offence under the program notice that happens after the authority received the notice if subsection (1) ceases to apply to the person under—

- (a) subsection (2)(b) if the administering authority states in the notice of refusal to approve the draft program—
 - (i) it is satisfied in the circumstances that subsection (1) should not apply to the person; and

- (ii) the reasons for the decision; and
 - (iii) the review or appeal details; or
- (b) subsection (2)(c).

(4) Subsection (3) applies even if the continuation of the original offence happened while subsection (1) applied.

Effect of failure to comply with program

354. If the holder of an approval for an environmental management program for an activity under a program notice does not comply with the program, section 353(1) ceases to apply to the person.

Authority may apply to Court for order setting aside immunity from prosecution

355.(1) If the administering authority receives a program notice from a person, the authority may apply to the Court for an order that section 353(1) does not apply to the person for any continuation of the original offence.

(2) The application must be made—

- (a) within 28 days after the administering authority receives the program notice or the longer period the Court in special circumstances allows; and
- (b) by filing written notice of the application with the registrar of the Court and serving a copy of the application on the person; and
- (c) by complying with rules of court applicable to the application.

(3) The making of the application does not stay the operation of section 353(1).

(4) The procedure for the application is to be in accordance with the rules of court applicable to it or, if the rules make no provision or insufficient provision, in accordance with directions of the judge.

Court to decide application

356.(1) The Court may grant an application under section 355 if the Court is satisfied—

- (a) the relevant event was wilfully done or omitted to be done with the intention of relying on the giving of a program notice as an excuse; or
- (b) it is not appropriate for section 353(1) to apply to the person who gave the program notice because of the nature and extent of the environmental harm caused or threatened by the continuation of the original offence.

(2) In deciding the application, the Court may have regard to the following—

- (a) the circumstances in which the relevant event happened;
- (b) the nature and extent of the environmental harm caused or threatened by a continuation of the original offence under the program notice;
- (c) the resilience of the receiving environment;
- (d) the environmental record of the person;
- (e) whether an environmental management program or protection order is in force for the activity.

(3) If the Court grants the application, the Court must make an order that section 353(1) does not apply to the person for a continuation of the original offence under the program notice (whether the continuation happened before or after the receiving of the program notice).

Power of Court to make order pending decision on application

357.(1) This section applies if the administering authority has made an application to the Court under section 355 but the Court has not decided the application.

(2) On the application of the administering authority, the Court may make any order the Court considers appropriate pending a decision on the application.

(3) Without limiting subsection (2), an order may direct the person who gave the program notice to do, or stop doing, anything specified in the order to prevent a continuation of the original offence under the notice.

(4) The Court's power under this section is in addition to its other

powers.

(5) A person who contravenes an order commits an offence against this Act.

Maximum penalty for subsection (5)—3 000 penalty units or 2 years imprisonment.

PART 5—ENVIRONMENTAL PROTECTION ORDERS

When order may be issued

358. The administering authority may issue an order (an “**environmental protection order**”) to a person—

- (a) if the person does not comply with a requirement to conduct or commission an environmental evaluation and submit it to the authority; or
- (b) if the person does not comply with a requirement to prepare an environmental management program and submit it to the authority; or
- (c) if, because of an environmental evaluation, the authority is satisfied unlawful environmental harm is being, or is likely to be, caused by an activity carried out, or proposed to be carried out, by the person; or
- (d) to secure compliance by the person with—
 - (i) the general environmental duty; or
 - (ii) an environmental protection policy; or
 - (iii) a condition of an environmental authority; or
 - (iv) a development condition of a development approval; or
 - (v) a condition of a site management plan; or

- (vi) an audit notice; or
- (vii) a surrender notice.

Standard criteria to be considered before issue of order

359. Before deciding to issue an environmental protection order, the administering authority must consider the standard criteria.

Form and content of order

360.(1) An environmental protection order—

- (a) must be in the form of a written notice; and
- (b) must specify the person to whom it is issued; and
- (c) may impose a reasonable requirement to prevent or minimise environmental harm; and
- (d) must state the review or appeal details; and
- (e) must be served on the recipient.

(2) Without limiting subsection (1)(c), an environmental protection order may—

- (a) require the recipient to not start, or stop, a stated activity indefinitely, for a stated period or until further notice from the administering authority; or
- (b) require the recipient to carry out a stated activity only during stated times or subject to stated conditions; or
- (c) require the recipient to take stated action within a stated period.

Offence not to comply with order

361.(1) The recipient must not wilfully contravene an environmental protection order.

Maximum penalty—2 000 penalty units or 2 years imprisonment.

(2) The recipient must not contravene an environmental protection order.

Maximum penalty—1 665 penalty units.

(3) In a proceeding for an offence against subsection (1), if the court is not satisfied the defendant is guilty of the offence charged but is satisfied the defendant is guilty of an offence against subsection (2), the court may find the defendant guilty of the offence against subsection (2).

Notice of disposal by recipient

362.(1) This section applies if the recipient of an environmental protection order proposes to dispose of the place or business to which the order relates to someone else (the “**buyer**”).

(2) Before agreeing to dispose of the place or business, the recipient must give written notice to the buyer of the existence of the order.

Maximum penalty—50 penalty units.

(3) If the recipient does not comply with subsection (2), the buyer may rescind the agreement by written notice given to the recipient before the completion of the agreement or possession under the agreement, whichever is the earlier.

(4) On rescission of the agreement under subsection (3)—

- (a) a person who was paid amounts by the buyer under the agreement must refund the amounts to the buyer; and
- (b) the buyer must return to the recipient any documents about the disposal (other than the buyer’s copy of the agreement).

(5) Subsections (3) and (4) have effect despite anything to the contrary in the agreement.

(6) Within 14 days after agreeing to dispose of the place or business, the recipient must give written notice of the disposal to the administering authority.

Maximum penalty for subsection (6)—50 penalty units.

Notice of ceasing to carry out activity

363. Within 14 days after ceasing to carry out the activity to which an environmental protection order relates, the recipient must give written notice

of the ceasing to carry out the activity to the administering authority.

Maximum penalty—50 penalty units.

PART 6—FINANCIAL ASSURANCES

When financial assurance may be required

364.(1) The administering authority may, by condition of an environmental authority, other than a level 1 or 2 approval, or approval of an environmental management program or site management plan, require the holder of the environmental authority or approval to give the administering authority financial assurance as security for—

- (a) compliance with the environmental authority, environmental management program or site management plan and any conditions of the authority, program or plan; and
- (b) costs or expenses, or likely costs or expenses, mentioned in section 367.

(2) However, the administering authority may impose a condition requiring a financial assurance to be given only if it is satisfied the condition is justified having regard to—

- (a) for an environmental authority, other than a level 1 or 2 approval, or an approval of an environmental management program—
 - (i) the degree of risk of environmental harm being caused, or that might reasonably be expected to be caused, by the activity carried out, or to be carried out, under the environmental authority or program; and
 - (ii) the likelihood of action being required to rehabilitate or restore and protect the environment because of environmental harm being caused by the activity; and
 - (iii) the environmental record of the holder; and
- (b) for an approval of a site management plan—
 - (i) the degree of risk of serious environmental harm being

caused as a result of the hazardous contaminant contaminating the land; and

- (ii) the likelihood of action being required to rehabilitate or restore the land because of serious environmental harm being caused by the hazardous contaminant; and
- (iii) the environmental record of the holder.

(3) The administering authority must decide the form and amount of the financial assurance.

(4) However, the administering authority must not require financial assurance of an amount more than the amount that, in the authority's opinion, represents the total of likely costs and expenses that may be incurred taking action to rehabilitate or restore and protect the environment because of environmental harm being caused by the activity.

(5) The administering authority may require a financial assurance to remain in force until it is satisfied no claim is likely to be made on the assurance.

Person may show cause why financial assurance should not be required

365.(1) Before issuing an environmental authority, other than an environmental authority (mining activities) or a level 1 or 2 approval, or certificate of approval of an environmental management program or site management plan subject to the condition that financial assurance be given, the administering authority must give the applicant for the authority or approval or person who submitted the program or plan a written notice under this section.

(2) The notice must—

- (a) state the grounds for the condition; and
- (b) state the form and extent of the financial assurance; and
- (c) invite the person to make representations to the administering authority to show why the environmental authority or certificate should not be subject to the condition; and
- (d) state the period (at least 30 days after the notice is given to the

person) within which the representations may be made.

(3) The representations must be made in writing.

(4) Within 28 days after the end of the period stated in the notice, the administering authority must—

- (a) consider the representations properly made by the person; and
- (b) if the administering authority issues the environmental authority or gives the approval subject to the condition that the holder give financial assurance—the authority must give written notice to the person giving reasons for imposing the condition.

Application for amendment or discharge of financial assurance

366.(1) This section applies to the following persons—

- (a) the holder of an environmental authority subject to a condition that financial assurance be given;
- (b) the holder of a level 1 approval if, immediately before the approval was issued, the person was the holder of a licence subject to the condition that financial assurance be given;
- (c) the holder of an environmental management program approval subject to the condition that financial assurance be given;
- (d) the holder of a site management plan approval subject to the condition that financial assurance be given.

(2) The person may, in the approved form, apply to the administering authority to have the assurance amended or discharged.

(3) The application must be supported by enough information to enable the administering authority to decide the application.

(4) If the financial assurance is for an environmental authority (mining activities), the administering authority may require the applicant to give it an audit statement for the assurance before deciding the application.

(5) The audit statement must—

- (a) be made by or for the applicant; and
- (b) state the extent to which activities carried out under each relevant mining tenement have complied with the conditions of the

environmental authority; and

- (c) state whether or not the amount of the financial assurance has been calculated in the way decided by the administering authority under section 364(3).

(6) The administering authority must—

- (a) for an application made by the holder of a level 1 approval—discharge the financial assurance for the licence held by the holder immediately before the issue of the approval; and
- (b) for any other application—decide the application within 28 days after receiving it and give the applicant an information notice about the decision.

Claims on financial assurances

367.(1) This section applies if the administering authority incurs, or might reasonably incur, costs or expenses in taking action to—

- (a) prevent or minimise environmental harm or rehabilitate or restore the environment, in relation to the carrying out of an activity under an environmental authority or an environmental management program approval for which financial assurance has been given; or
- (b) carry out work to remediate land managed under a site management plan approval for which financial assurance has been given; or
- (c) to secure compliance with an environmental authority, environmental management program or site management plan or any conditions of the authority, program or plan, for which financial assurance has been given.

(2) The administering authority may recover the reasonable costs or expenses of taking the action by making a claim on or realising the financial assurance or part of it.

(3) Before making the claim on or realising the financial assurance or part of it, the administering authority must give to the authority or approval holder a written notice under this section.

(4) The notice must—

- (a) state details of the action taken or proposed to be taken; and
- (b) state the amount of the financial assurance to be claimed or realised; and
- (c) invite the person to make representations to the administering authority to show why the financial assurance should not be claimed or realised as proposed; and
- (d) state the period (at least 30 days after the notice is given to the person) within which the representations may be made.

(5) The representations must be made in writing.

(6) After the end of the period stated in the notice, the administering authority must consider the representations properly made by the person.

(7) If the administering authority decides to make a claim on or realise the financial assurance, it must, within 5 business days, give the holder an information notice about the decision.

(8) In this section—

“**environmental authority**” includes a cancelled or surrendered environmental authority.

“**holder**”, for a cancelled or surrendered environmental authority, means the person who held the authority immediately before its cancellation or surrender.

PART 7—SPECIAL PROVISIONS ABOUT WASTE MANAGEMENT

Chief executive may require local government to remove waste etc.

368.(1) The chief executive may, by written notice given to a local government, require the local government to—

- (a) carry out any of the following works (“**waste management works**”)—

- (i) remove, collect, transport, store, treat or dispose of waste;
 - (ii) clean streets;
 - (iii) clean sanitary conveniences; or
- (b) provide a place, containers or equipment for depositing or disposing of waste.

(2) The notice must state whether the notice applies to the whole or part of the local government's area.

(3) If the notice requires the disposal of waste, the notice may state the way it is to be disposed.

(4) The notice may apply for a period or without limit of time.

(5) The local government must comply with the notice.

Waste removal etc. by private contractors

369.(1) A person must not, for fee or reward, perform waste management works in a local government area other than under—

- (a) a written contract with the local government; or
- (b) the local government's written approval under this section.

Maximum penalty—100 penalty units.

(2) An application for an approval must be made to a local government in the approved form.

(3) The local government must promptly consider an application for an approval and grant, or refuse to grant, the application.

(4) If the local government fails to decide the application within 60 days after its receipt, the failure is taken to be a decision by the local government to refuse to grant the application.

(5) The local government may impose relevant conditions on the approval that it considers to be necessary or desirable.

(6) The local government may, by written notice given to the holder of the approval—

- (a) revoke it; or

- (b) impose stated conditions on it; or
- (c) vary its conditions in a stated way.

(7) The notice must state—

- (a) the grounds for the action; and
- (b) the facts and circumstances forming the basis for the grounds.

(8) However, the local government may revoke the approval only if the person does not comply with its conditions.

PART 8—CONTAMINATED LAND

Division 1—Interpretation

Definition for pt 8

370. In this part—

“repealed Act” means the *Contaminated Land Act 1991* as in force immediately before the commencement of this part.

Division 2—Inclusion of land on environmental management register

Owner or occupier of land to notify administering authority

371.(1) If the owner or occupier of land becomes aware a notifiable activity is being carried out on the land, the owner or occupier must, within 30 days after becoming aware the activity is being carried out, give notice under the subsection to the administering authority in the approved form.

Maximum penalty—50 penalty units.

(2) If the owner or occupier of land becomes aware the land has been, or is being, contaminated by a contaminant the owner or occupier knows is a hazardous contaminant, the owner or occupier must, within 30 days after becoming aware the land has been, or is being, contaminated, give notice

under the subsection to the administering authority in the approved form.

Maximum penalty—100 penalty units.

(3) However, the owner or occupier of land does not commit an offence against subsection (1) or (2) if the administering authority has already been given notice under the subsection about the activity or contamination.

Local government to notify administering authority

372.(1) If a local government becomes aware a notifiable activity has been, or is being, carried out on land in its area, the local government must, within 30 days after becoming aware of the activity having been, or being, carried out give notice under the subsection to the administering authority in the approved form.

(2) If a local government becomes aware that land in its area has been, or is being, contaminated by a contaminant the local government knows is a hazardous contaminant, the local government must, within 30 days after becoming aware the land has been, or is being, contaminated, give notice under the subsection to the administering authority in the approved form.

(3) However, subsection (1) or (2) does not apply if the administering authority has already been given notice under the subsection about the activity or contamination.

Notice to be given to owner of land

373.(1) This section applies if—

- (a) the administering authority is given notice by an occupier of land (other than the land's owner) that a notifiable activity is being carried out on the land; or
- (b) the administering authority is given notice by a local government that a notifiable activity has been, or is being, carried out on land in its area; or
- (c) the administering authority otherwise reasonably believes that a notifiable activity has been, or is being, carried out on land; or
- (d) the administering authority has conducted a preliminary investigation of land and the authority reasonably believes the land

is contaminated land; or

- (e) the administering authority is given a report by the occupier of land or another person about an investigation of the land conducted or commissioned by the occupier or other person and the administering authority reasonably believes the land is contaminated land.

Example of paragraph (c)—

The department in which the *Mineral Resources Act 1989* is administered gives the administering authority notice that hazardous mine wastes have been stored on the land.

(2) The administering authority must, within the time that is reasonable in the circumstances, give written notice about the activity or contamination to the owner of the land.

(3) However, the administering authority is not required to give a notice to the owner of the land if the land has already been investigated and the administering authority is satisfied the land is not contaminated land.

(4) The notice must—

- (a) inform the owner that the administering authority believes the land has been, or is being, used for a notifiable activity or is contaminated land; and
- (b) state the grounds on which the administering authority believes the land has been, or is being, used for a notifiable activity or is contaminated land; and
- (c) inform the owner that the administering authority is considering including particulars of the land in the environmental management register; and
- (d) if an investigation of the land has been conducted—be accompanied by a copy of the report prepared about the investigation; and
- (e) invite submissions from the owner about whether or not the land has been, or is being used, for a notifiable activity or is contaminated land; and
- (f) state the day (at least 30 days after the day the notice is given) by

which submissions may be made to the administering authority;
and

- (g) state that any submissions made to the administering authority must be accompanied by a statutory declaration by the owner declaring that the owner—
 - (i) has not knowingly included any false or misleading information in the submission; and
 - (ii) has given all relevant information to the administering authority.

Decision about including land in environmental management register

374.(1) The administering authority must, after considering any submissions made by the land's owner, decide whether the land has been, or is being, used for a notifiable activity or is contaminated land.

(2) Subsection (1) does not limit the matters the administering authority may consider in making the decision.

(3) If the administering authority decides the land has been, or is being, used for a notifiable activity or is contaminated land, the administering authority must record particulars of the land in the environmental management register.

(4) However, the administering authority is not required to record particulars of land that has been used for a notifiable activity in the environmental management register if—

- (a) the land is no longer being used for a notifiable activity; and
- (b) the land has been investigated and the administering authority is satisfied the land is not contaminated land.

(5) The administering authority must, within 10 days after making a decision, give written notice of the decision to—

- (a) the owner of the land; and
- (b) the relevant local government.

(6) The notice must state the reasons for the decision.

(7) Also, if particulars of the land are recorded in the environmental

management register, the notice to the owner must state the review or appeal details.

Division 3—Investigation of land on environmental management register

Voluntary submission of report about investigation

375.(1) A person may, at any time, conduct or commission an investigation of land (a “**site investigation**”) for which particulars are recorded in the environmental management register to scientifically assess whether the land is contaminated in a way that is a risk to human health or another part of the environment and submit a report about the investigation to the administering authority.⁸⁸

(2) However, if the person intending to conduct or commission the site investigation and submit the report is not the land’s owner, the person must obtain the owner’s consent before beginning the investigation.

Administering authority may require site investigation

376.(1) This section applies if the administering authority is satisfied—

- (a) after a preliminary investigation, particulars of land are recorded in the environmental management register because the land is contaminated land; and
- (b) the hazardous contaminant contaminating the land is in a concentration that has the potential to cause serious or material environmental harm; and
- (c) a person, animal or another part of the environment may be exposed to the hazardous contaminant.

(2) The administering authority may require a site investigation to be conducted or commissioned by—

- (a) if the person who released the contaminant is known and can be located—the person; or

⁸⁸ See also section 381 (Who must conduct site investigation).

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- (b) the relevant local government; or
- (c) the owner of the land.

(3) However, the administering authority may require the local government to conduct or commission the investigation only if subsection (2)(a) does not apply and—

- (a) the administering authority reasonably believes—
 - (i) the land has been contaminated because the local government gave approval for the use of, or an activity to be carried out on, the land; and
 - (ii) in giving the approval the local government did not comply with the requirements under any Act in relation to the approval; and
 - (iii) the local government should have known the land would be contaminated because of the approval; or
- (b) under the repealed Act, particulars of the land were recorded in the contaminated sites register as a restricted site and, after the recording, the local government gave approval for the use of, or an activity to be carried out on, the land contrary to the restriction; or
- (c) under the repealed Act, particulars of the land were recorded in the contaminated sites register or, under this Act, particulars of the land are recorded in the environmental management register or contaminated land register, and—
 - (i) after the recording, the local government approved the land be used for a use or activity that was or is inconsistent with particulars of the land being recorded in the register; and
 - (ii) the use or activity has caused environmental harm to human health or another part of the environment.

(4) Also, the administering authority may require the owner of the land to conduct or commission the investigation only if subsection (2)(a) and (3) do not apply and—

- (a) the administering authority reasonably believes the land was contaminated before the commencement of the repealed Act; or

- (b) when the land was acquired by the owner, particulars of the land were recorded—
 - (i) under the repealed Act, in the contaminated sites register as a confirmed site, restricted site or probable site; or
 - (ii) under this Act, in the environmental management register or the contaminated land register; or
- (c) the contamination happened after the owner acquired the land.

(5) However, the administering authority must not require the owner of the land to conduct or commission an investigation under subsection (4)(a) or (b) if the owner is a mortgagee of the land.

(6) Also, the administering authority must not require an investigation to be conducted or commissioned if the land is subject to a site management plan for the contamination and the conditions of the plan are being complied with.

(7) The recipient of a notice to conduct or commission a site investigation must comply with the requirement unless the administering authority waives the requirement.

Maximum penalty—100 penalty units.

Notice to conduct or commission site investigation

377.(1) A requirement to conduct or commission a site investigation must be made by written notice to the person (the “**recipient**”) required to conduct or commission the site investigation.

(2) If the recipient is not the land’s owner, the administering authority must also give a copy of the notice to the owner.

(3) The notice must—

- (a) state the grounds on which the requirement is made; and
- (b) outline the facts and circumstances forming the basis for the grounds; and
- (c) state the matters relevant for the site investigation; and
- (d) state the day (at least a reasonable period after the notice is given) by which a report on the site investigation must be submitted to

- the administering authority; and
- (e) state the review or appeal details.

Waiver of requirement to conduct or commission site investigation

378.(1) A recipient may apply to the administering authority for it to waive the requirement for the recipient to conduct or commission a site investigation.

(2) The application must—

- (a) be made to the administering authority in the approved form; and
- (b) be supported by enough information to enable the authority to decide the application.

(3) The administering authority must decide the application within 28 days after receiving it.

(4) The administering authority may waive the requirement to conduct or commission a site investigation only if it is satisfied—

- (a) conducting or commissioning the investigation would cause the recipient financial hardship; or
- (b) if the recipient is the land's owner—the owner's rights in relation to the land do not include exercising control over environmental management of the land.

(5) The administering authority must, within 10 days after making a decision, give written notice of the decision to the recipient.

(6) The notice to the recipient must state—

- (a) the reasons for the decision; and
- (b) if the decision is to refuse the application—the review or appeal details.

Failure to make decision on waiver of site investigation taken to be refusal

379. If the administering authority fails to make a decision about an application for it to waive the requirement for the recipient to conduct or

commission a site investigation within the time it is required to make a decision on the application, the failure is taken to be a decision by the authority to refuse the application at the end of the time.

Procedure to be followed if recipient is not owner

380.(1) This section applies if the recipient of a notice to conduct or commission a site investigation of land is not the land's owner.

(2) The recipient, or person conducting the site investigation for the recipient (the “**investigator**”), may enter the land to conduct the investigation only—

- (a) with the consent of the owner and occupier of the land; or
- (b) if the recipient or investigator has given at least 7 days written notice to the owner and occupier.

(3) The notice must inform the owner and any occupier of—

- (a) the intention to enter the land; and
- (b) the purpose of the entry; and
- (c) the days and times when the entry is to be made.

(4) In conducting the site investigation, the recipient or investigator must take all reasonable steps to ensure the recipient or investigator causes as little inconvenience, and does as little damage, as is practicable in the circumstances.

(5) Nothing in this section authorises the recipient or investigator to enter a structure, or part of a structure, used for residential purposes.

(6) If a person incurs loss or damage because of the site investigation conducted by the recipient or investigator, the person is entitled to be paid by the recipient or investigator the reasonable compensation because of the loss or damage that is agreed between the recipient or investigator and the person, or failing agreement, decided by a court having jurisdiction for the recovery of amounts up to the amount of compensation claimed.

(7) The court may make the order about costs it considers just.

Who must conduct site investigation

381. A site investigation must be conducted by a person who—

- (a) is a member of an organisation prescribed under a regulation for this section; and
- (b) has qualifications and experience relevant to the site investigation.

Fee for consideration of report about site investigation

382. A person who submits a report about a site investigation to the administering authority for consideration must pay the authority the fee prescribed under a regulation.

Declarations to accompany report

383.(1) A site investigation report submitted to the administering authority must be accompanied by a statutory declaration by—

- (a) if the report—
 - (i) is submitted to comply with a notice given to a person by the administering authority—the recipient; or
 - (ii) is voluntarily submitted by a person—the person; and
- (b) the investigator.

(2) The recipient's or other person's declaration must be made—

- (a) if the recipient or other person is an individual—by the recipient or other person; or
- (b) if the recipient or other person is a corporation—by an executive officer of the corporation.

(3) The recipient's or other person's declaration must state that the recipient or other person—

- (a) has not knowingly given any false or misleading information to the investigator; and
- (b) has given all relevant information to the investigator.

(4) A declaration by the investigator must—

- (a) state his or her qualifications and experience relevant to the investigation; and
- (b) state that he or she has not knowingly included any false, misleading or incomplete information in the report; and
- (c) state that he or she has not knowingly failed to reveal any relevant information or document to the administering authority; and
- (d) certify that—
 - (i) the report addresses the relevant matters for the investigation and is factually correct; and
 - (ii) the opinions expressed in it are honestly and reasonably held.

Administering authority to consider and act on site investigation report

384.(1) The administering authority must, within 28 days after being given the site investigation report, consider the report and decide whether the land is contaminated land.

(2) After making its decision, the administering authority may—

- (a) if the administering authority is satisfied the land is not contaminated land—remove particulars of the land from the environmental management register; or
- (b) if the administering authority is satisfied the land is contaminated land but can be used for stated uses with further management—leave particulars of the land on the environmental management register and prepare, or require another person to prepare, a site management plan for the land; or
- (c) if the administering authority is satisfied the land is contaminated land and action needs to be taken to remediate the land to prevent serious environmental harm to a person, animal or another part of the environment—record particulars of the land in the contaminated land register; or
- (d) in any other case—leave particulars of the land on the environmental management register.

(3) The administering authority must, within 10 days after making its

decision, give written notice of the decision to—

- (a) the land's owner; and
- (b) if a person other than the land's owner submitted the report—the other person; and
- (c) if the decision is to remove particulars of the land from the environmental management register—the relevant local government; and
- (d) if the decision is to record particulars of the land in the contaminated land register—
 - (i) the relevant local government; and
 - (ii) any registered mortgagee of the land.

(4) The notice must state—

- (a) the reasons for the decision; and
- (b) for a notice to the land's owner about a decision under subsection (2)(b) to (d)—the review or appeal details.

(5) Also, if the administering authority removes particulars of the land from the environmental management register, the notice to the following persons must be accompanied by a suitability statement for the land—

- (a) the land's owner;
- (b) if a person other than the land's owner submitted the report—the other person.

Administering authority may require another report or additional information

385.(1) If the administering authority is satisfied the site investigation report does not adequately address the relevant matters for the site investigation to which the report relates, it may require the recipient or other person who submitted the report to conduct or commission another site investigation and submit a report on the investigation to it.

(2) If the administering authority is satisfied additional relevant information is required about a site investigation report, it may require further information to be given to it by—

- (a) if the report is submitted to comply with a notice given to a person by the administering authority—the recipient; or
- (b) if the report is voluntarily submitted by a person—the person.

(3) A requirement under subsection (2) must be made by written notice given to the recipient or other person.

(4) The notice must—

- (a) state the grounds on which the requirement is made; and
- (b) outline the facts and circumstances forming the basis for the grounds; and
- (c) state the relevant matters for the information required; and
- (d) state the day (at least a reasonable period after the notice is given) by which the information must be given to the administering authority; and
- (e) state the review or appeal details.

Owner of land to be given copy of report

386. If the person who submitted the report is not the land's owner, the person must, within 10 days after giving the administering authority a site investigation report or relevant additional information, give a copy of the report or information to the owner.

Maximum penalty—10 penalty units.

Cost of site investigation and report

387. The recipient or other person who submitted the report must meet the following costs—

- (a) the costs of conducting or commissioning the site investigation and report; and
- (b) the costs of giving additional relevant information about the report required by the administering authority.

Extensions of time for decisions on submission of site investigation report

388.(1) The administering authority may decide to extend the time it is required to consider and make a decision about a site investigation report if—

- (a) it has required additional relevant information about the report; or
- (b) it is satisfied there are special circumstances for extending the time.

(2) The authority must give an information notice about its decision to extend the time to—

- (a) the recipient; and
- (b) if the recipient is not the land's owner—the owner.

(3) The notice must be given before the extension starts.

Failure to make decision on site investigation report taken to be refusal

389. If the administering authority fails to make a decision about a site investigation report within the time it is required to make a decision on the report, the failure is taken to be a decision by the authority to leave particulars of the land to which the report relates in the environmental management register.

*Division 4—Remediation of land***Voluntary remediation of contaminated land**

390.(1) A person may, after submitting a site investigation report, conduct or commission work to remediate land for which particulars are recorded in the environmental management register or contaminated land register and submit a report (a “**validation report**”) about the work to the administering authority.

(2) However, if the person intending to carry out the work and submit the

validation report is not the land's owner, the person must obtain the owner's consent before beginning the work.

Administering authority may require remediation of contaminated land

391.(1) The administering authority may require the following persons to conduct or commission work to remediate land for which particulars are recorded in the contaminated land register and submit a validation report about the work to the administering authority—

- (a) if the person who released the hazardous contaminant contaminating the land is known and can be located—the person;
- (b) the relevant local government;
- (c) the owner of the land.

(2) However, the administering authority may require the local government to conduct or commission work to remediate the land only if subsection (1)(a) does not apply and—

- (a) the administering authority reasonably believes—
 - (i) the land has been contaminated because the local government gave approval for the use of, or an activity to be carried out on, the land; and
 - (ii) in giving the approval the local government failed to comply with the requirements under any Act in relation to the approval; and
 - (iii) the local government should have known the approval would result in the land being contaminated; or
- (b) under the repealed Act, particulars of the land were recorded in the contaminated sites register as a restricted site and, after the recording, the local government gave approval for the use of, or an activity on, the land contrary to the restriction; or
- (c) under the repealed Act, particulars of the land were recorded in the contaminated sites register or, under this Act, particulars of the land are recorded in the environmental management register or contaminated land register, and—

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- (i) after the recording, the local government permitted the land to be used for a use or activity that was inconsistent with the particulars of the land being recorded in the register; and
- (ii) the use or activity has caused environmental harm to human health or another part of the environment.

(3) Also, the administering authority may require the owner of the land to conduct or commission work to remediate the land only if subsection (1)(a) and (2) do not apply and—

- (a) the land was affected by the hazardous contaminant before the commencement of the repealed Act; or
- (b) when the land was acquired by the owner, particulars of the land were recorded—
 - (i) under the repealed Act, in the contaminated sites register as a confirmed site, restricted site or probable site; or
 - (ii) under this Act, in the environmental management register or the contaminated land register; or
- (c) the contamination happened after the owner acquired the land.

(4) However, the administering authority must not require the owner of the land to conduct or commission work to remediate the land under subsection (3)(a) or (b) if the owner is a mortgagee of the land.

(5) A requirement to conduct or commission work to remediate land must—

- (a) be in the form of a written notice (a “**remediation notice**”); and
- (b) state the person (the “**recipient**”) to whom it is issued; and
- (c) state the work to be conducted or commissioned by the recipient to remediate the land; and
- (d) give the recipient approval to remove and treat or dispose of soil from the land and state any conditions applicable to the removal and disposal; and
- (e) state that the recipient must give a validation report to the administering authority within the time (not less than 30 days after completing the work to be carried out) stated in the notice; and

- (f) state the review or appeal details; and
- (g) be served on the recipient and the land's owner.

(6) Also, the remediation notice may include a requirement to prepare and submit to the administering authority for approval a site management plan for the land.

(7) The recipient must comply with the notice unless the recipient is granted a waiver under section 392.

Maximum penalty—1 000 penalty units.

Waiver of requirement to remediate land

392.(1) A recipient may apply to the administering authority for it to waive the requirement for the recipient to conduct or commission work to remediate contaminated land.

(2) The application must—

- (a) be made to the administering authority in the approved form; and
- (b) be supported by enough information to enable the authority to decide the application.

(3) The administering authority must decide the application within 28 days after receiving it.

(4) The administering authority may waive the requirement for the recipient to conduct or commission work to remediate the land only if it is satisfied—

- (a) conducting or commissioning the remediation would cause the recipient financial hardship; or
- (b) the contamination happened while the recipient was carrying out an activity that is lawful apart from this Act and the recipient complied with the general environmental duty; or
- (c) the contamination happened before the commencement of the repealed Act and it would not be reasonable in the circumstances for the recipient to conduct or commission the work to remediate the land; or
- (d) if the recipient is the land's owner—the owner's rights in relation

to the land do not include exercising control over environmental management of the land.

(5) The administering authority must, within 10 days after making a decision, give the recipient an information notice about the decision.

Failure to make decision on remediation taken to be refusal

393. If the administering authority fails to make a decision about an application for it to waive, wholly or partially, the requirement for the recipient to conduct or commission work to remediate contaminated land within the time it is required to make a decision on the application, the failure is taken to be a decision by the authority to refuse the application at the end of the time.

Procedure to be followed if recipient is not owner

394.(1) This section applies if the recipient of a notice to conduct or commission work to remediate contaminated land is not the land's owner.

(2) The recipient, or person conducting the work for the recipient (the “**contractor**”), may enter the land to conduct the work only—

- (a) with the consent of the owner and occupier of the land; or
- (b) if the recipient or contractor has given at least 7 days written notice to the owner and occupier.

(3) The notice must inform the owner and occupier of—

- (a) the intention to enter the land; and
- (b) the purpose of the entry; and
- (c) the days and times when the entry is to be made.

(4) In conducting the work, the recipient or contractor must take all reasonable steps to ensure the recipient or contractor causes as little inconvenience, and does as little damage, as is practicable in the circumstances.

(5) Nothing in this section authorises the recipient or contractor to enter a structure, or part of a structure, used for residential purposes.

(6) If a person incurs loss or damage because of the work conducted by

the recipient or contractor, the person is entitled to be paid by the recipient or contractor the reasonable compensation because of the loss or damage that is agreed between the recipient or contractor and the person, or failing agreement, decided by a court having jurisdiction for the recovery of amounts up to the amount of compensation claimed.

(7) The court may make the order about costs it considers just.

Who must prepare validation report

395.(1) The validation report must be prepared by a person who—

- (a) is a member of an organisation prescribed under a regulation for this section; and
- (b) has qualifications and experience relevant to the preparation of the validation report.

(2) The validation report given to the administering authority must be accompanied by—

- (a) the prescribed fee; and
- (b) a statutory declaration by the person who prepared the report.

(3) The declaration must—

- (a) state the person's qualifications and experience relevant to the validation report; and
- (b) state that the person has not knowingly included any false, misleading or incomplete information in the report; and
- (c) state that the person has not failed to reveal any relevant information or document to the administering authority; and
- (d) certify that—
 - (i) the report addresses the relevant matters for the report and is factually correct; and
 - (ii) the opinions expressed in it are honestly and reasonably held.

Administering authority to consider and act on validation report

396.(1) The administering authority must, within 28 days after being

given the validation report, consider the report and decide whether the land is still contaminated land.

(2) After making its decision, the administering authority may, for land for which particulars are recorded in the environmental management register—

- (a) if the administering authority is satisfied the land is no longer contaminated land—remove particulars of the land from the environmental management register; or
- (b) if the administering authority is satisfied the land has been partially remediated but is still contaminated land that requires further management—leave particulars of the land in the environmental management register and prepare, or require another person to prepare, a site management plan for the land; or
- (c) in any other case—leave particulars of the land on the environmental management register.

(3) Also, the administering authority may, for land for which particulars are recorded in the contaminated land register—

- (a) if the administering authority is satisfied the land is no longer contaminated land—remove particulars of the land from the contaminated land register; or
- (b) if the administering authority is satisfied the land has been partially remediated but it is still contaminated land that requires further management—record particulars of the land in the environmental management register and prepare, or require another person to prepare, a site management plan for the land; or
- (c) in any other case—leave particulars of the land on the contaminated land register.

Notice to be given of decision made about validation report

397.(1) The administering authority must, within 10 days after making its decision give written notice of the decision to—

- (a) the land's owner; and
- (b) if a person other than the land's owner submitted the report—the

other person; and

- (c) if the decision is to record particulars of the land in, or remove particulars of the land from, the environmental management register or contaminated land register—the relevant local government; and
- (d) if the decision is about land for which particulars are recorded in the contaminated land register—any registered mortgagee of the land.

(2) The notice must state—

- (a) the reasons for the decision; and
- (b) if the decision is to record, or to continue to record, particulars of the land in the environmental management register or contaminated land register—the review or appeal details.

(3) Also, if the administering authority removes particulars of the land from the environmental management register or contaminated land register, the notice to the following persons must be accompanied by a suitability statement for the land—

- (a) the land's owner;
- (b) if a person other than the land's owner submitted the report—the other person.

Administering authority may require another report or additional information

398.(1) If the administering authority is satisfied the validation report does not adequately address the relevant matters for the remediation works to which it relates, it may require the recipient or other person who submitted the report to carry out or commission additional remediation works and submit a validation report about the additional work to it.

(2) If the administering authority is satisfied additional relevant information is required about the validation report, it may require the person who submitted the report to give it the information.

(3) A requirement for further information must be made by written notice given to the person.

(4) The notice must—

- (a) state the grounds on which the requirement is made; and
- (b) outline the facts and circumstances forming the basis for the grounds; and
- (c) state the relevant matters for the information required; and
- (d) state the day (at least a reasonable period after the notice is given) by which the information must be given to the administering authority; and
- (e) state the review or appeal details.

Extensions of time for consideration of validation report

399.(1) The administering authority may decide to extend the time in which it is required to consider and make a decision about a validation report if—

- (a) it has required additional information about the report; or
- (b) it is satisfied there are special circumstances for extending the time.

(2) The authority must give an information notice about its decision to extend the time to—

- (a) the person (the “**submitter**”) who submitted the report; and
- (b) if the submitter is not the land’s owner—the owner.

(3) The notice must be given before the extension starts.

Failure to make decision on validation report taken to be refusal

400. If the administering authority fails to make a decision about a validation report within the time it is required to make a decision about the report the failure is taken to be a decision by the authority to leave the particulars on the environmental management register or the contaminated land register at the end of the time.

Division 5—Site management plans***Subdivision 1—Preliminary*****What is a site management plan**

401.(1) A site management plan is a plan used to manage land for which particulars are recorded in the environmental management register because the land is contaminated land.

(2) A site management plan is used to manage the environmental harm that may be caused by the hazardous contaminant contaminating the land by applying conditions to the use or development of, or activities carried out on, the land.

Content of site management plan

402. A site management plan must—

- (a) state the objectives to be achieved and maintained under the plan; and
- (b) state how the objectives are to be achieved and maintained; and
- (c) make provision for monitoring and reporting compliance with the plan.

Subdivision 2—Procedure for approval of site management plan**Voluntary submission of draft site management plan**

403.(1) A person may, after submitting a site investigation report, submit to the administering authority for approval a draft site management plan for land for which particulars are recorded in the environmental management register.

(2) However, if the person intending to submit the draft plan for approval is not the land's owner, the person must obtain the owner's consent before submitting it.

Application for approval of site management plan

404. An application for the approval of a site management plan must—

- (a) be made to the administering authority in the approved form; and
- (b) be supported by enough information to enable the administering authority to decide the application, including, for example—
 - (i) a report on the scientific investigation of the contamination of the land; and
 - (ii) relevant information about the likely risks to the environment from the hazardous contaminant contaminating the land; and
 - (iii) details of the measures proposed to be taken to manage the risk of serious environmental harm being caused to persons, animals or another part of the environment by the hazardous contaminant; and
- (c) if the application is made by a person other than the land's owner—be accompanied by a statement from the owner agreeing to the draft plan; and
- (d) be accompanied by the prescribed fee.

Administering authority may prepare or require site management plan

405.(1) This section applies if—

- (a) particulars of land are recorded in the environmental management register or contaminated land register; and
- (b) the land is contaminated land; and
- (c) a site investigation of the land has been conducted; and
- (d) the contamination may be managed by applying conditions to the use or development of, or activities carried out on, the land.

(2) The administering authority may—

- (a) prepare a site management plan for the land; or
- (b) require a draft site management plan to be prepared or commissioned, and submitted to it for approval, by—

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- (i) if the person who released the contaminant is known and can be located—the person; or
- (ii) the relevant local government; or
- (iii) the owner of the land.

(3) However, the administering authority may require the local government to prepare or commission the plan only if subsection (2)(b)(i) does not apply and—

- (a) the administering authority reasonably believes—
 - (i) the land has been contaminated because the local government gave approval for the use of, or an activity to be carried out on the land; and
 - (ii) in giving the approval the local government did not comply with the requirements under any Act in relation to the approval; and
 - (iii) the local government should have known the land would be contaminated because of the approval; or
- (b) under the repealed Act, particulars of the land were recorded in the contaminated sites register as a restricted site and, after the recording, the local government gave approval for the use of, or an activity to be carried out on, the land contrary to the restriction; or
- (c) under the repealed Act, particulars of the land were recorded in the contaminated sites register or, under this Act, particulars are recorded in the environmental management register, and—
 - (i) after the recording, the local government approved the land be used for a use or activity that was or is inconsistent with particulars of the land being recorded in the register; and
 - (ii) the use or activity has caused environmental harm to human health or another part of the environment.

(4) Also, the administering authority may require the owner of the land to prepare or commission the plan only if subsections (2)(b)(i) and (3) do not apply and—

- (a) the administering authority reasonably believes the land was

- contaminated before the commencement of the repealed Act; or
- (b) when the land was acquired by the owner, particulars of the land were recorded—
 - (i) under the repealed Act, in the register as a confirmed site, restricted site or probable site; or
 - (ii) under this Act, in the environmental management register; or
 - (c) the contamination happened after the owner acquired the land.

(5) However, the administering authority must not require the owner of the land to prepare or commission a plan under subsection (4)(a) or (b) if the owner is a mortgagee of the land.

(6) The recipient of a notice to prepare or commission a site management plan must comply with the requirement.

Maximum penalty—100 penalty units.

Requirement to prepare draft site management plan

406.(1) A requirement to prepare or commission a draft site management plan for contaminated land must be made by written notice given to the person required to prepare or commission the plan (the “**recipient**”).

(2) If the person is not the owner of the land, the administering authority must also give a copy of the notice to the owner.

(3) The notice must state—

- (a) the grounds on which the requirement is made; and
- (b) the matters to be addressed by the plan; and
- (c) for a notice to the recipient—the day (at least a reasonable period after the notice is given) by which the plan must be prepared and submitted to the administering authority; and
- (d) the review or appeal details.

Waiver of requirement to prepare or commission site management plan

407.(1) A recipient may apply to the administering authority for it to

waive the requirement for the recipient to prepare or commission a site management plan for contaminated land.

(2) The application must—

- (a) be made to the administering authority in the approved form; and
- (b) be supported by enough information to enable the authority to decide the application.

(3) The administering authority must decide the application within 28 days after receiving it.

(4) The administering authority may waive the requirement to prepare or commission a site management plan only if it is satisfied—

- (a) preparing or commissioning the plan would cause the recipient financial hardship; or
- (b) if the recipient is the land's owner—the owner's rights in relation to the land do not include exercising control over environmental management of the land.

(5) The administering authority must, within 10 days after making a decision, give written notice of the decision to the recipient.

(6) The notice to the recipient must state—

- (a) the reasons for the decision; and
- (b) if the decision is to refuse the application—the review or appeal details.

Failure to make decision on waiver of site management plan taken to be refusal

408. If the administering authority fails to make a decision about an application for it to waive the requirement for the recipient to prepare or commission a site management plan within the time it is required to make a decision on the application, the failure is taken to be a decision by the authority to refuse the application at the end of the time.

Procedure to be followed if recipient is not owner

409.(1) This section applies if the recipient of a notice to prepare or commission a draft site management plan for land is not the land's owner.

(2) The recipient, or person preparing the plan for the recipient (the “**consultant**”), may enter the land to prepare the site management plan only—

- (a) with the consent of the owner and occupier of the land; or
- (b) if the recipient or consultant has given at least 7 days written notice to the owner and occupier.

(3) The notice must inform the owner and occupier of—

- (a) the intention to enter the land; and
- (b) the purpose of the entry; and
- (c) the days and times when the entry is to be made.

(4) In preparing the plan, the recipient or consultant must take all reasonable steps to ensure the recipient or consultant causes as little inconvenience, and does as little damage, as is practicable in the circumstances.

(5) Nothing in this section authorises the recipient or consultant to enter a structure, or part of a structure, used for residential purposes.

(6) If a person incurs loss or damage because of the entry of the land by the recipient or consultant to prepare a site management plan, the person is entitled to be paid by the recipient or consultant the reasonable compensation because of the loss or damage that is agreed between the recipient or consultant and the person, or failing agreement, decided by a court having jurisdiction for the recovery of amounts up to the amount of compensation claimed.

(7) The court may make the order about costs it considers just.

Who must prepare draft site management plan

410. A site management plan must be prepared by a person who—

- (a) is a member of an organisation prescribed under a regulation for this section; and

- (b) has qualifications and experience relevant to the preparation of the site management plan.

Administering authority may require another site management plan or additional information

411.(1) If the administering authority is satisfied the draft site management plan does not adequately address the relevant matters for the plan, it may require the recipient or other person who submitted the plan to prepare or commission another site management plan.

(2) Also, the administering authority may require—

- (a) a recipient or other person who submits a draft site management plan to it to give it additional information about the plan; or
- (b) any information included in the draft plan, or any additional information required under paragraph (a), to be verified by statutory declaration.

(3) If the authority decides to make a requirement under subsection (2)(a), it must give the person of whom the requirement is made an information notice about the decision.

Administering authority to consider draft site management plan

412. The administering authority must decide whether to approve a draft site management plan submitted to it within 28 days after the day it is given the plan.

Approval of draft site management plan

413.(1) This section applies if the administering authority—

- (a) approves a draft site management plan for contaminated land as amended at the request of, or with the agreement of, the administering authority; or
- (b) approves a draft site management plan for contaminated land as submitted; or
- (c) prepares a site management plan for contaminated land.

(2) The administering authority must, within 10 days after the approval or preparation—

- (a) record the details of the plan in the environmental management register; and
- (b) for a plan approved by the administering authority—give to the person who submitted the plan and, if the plan is submitted by a person other than the land's owner, the owner—
 - (i) a certificate of approval for the plan; and
 - (ii) written notice of the approval; and
 - (iii) a suitability statement for the land; and
- (c) for a plan prepared by the administering authority—give to the owner—
 - (i) written notice of the preparation of the plan; and
 - (ii) a suitability statement for the land.

(3) A notice given under subsection (2)(c) must—

- (a) state the reasons for the imposition of the site management plan; and
- (b) be accompanied by a copy of the site management plan; and
- (c) state the review or appeal details.

(4) Also, if the administering authority approves or prepares a site management plan for land, the administering authority must, within 10 days of the approval or preparation, give a copy of the plan to the relevant local government.

Refusal to approve draft site management plan

414. If the administering authority refuses to approve a draft site management plan, the authority must, within 10 days after its decision, give an information notice about the decision to—

- (a) the person who submitted the plan; and
- (b) if the person who submitted the plan is not the land's owner—the land's owner.

Extensions of time for decisions on submission of draft site management plans

415.(1) The administering authority may decide to extend the time in which it is required to decide whether or not to approve a draft site management plan if—

- (a) it has required additional information about the draft plan; or
- (b) it is satisfied there are special circumstances for extending the time.

(2) The authority must give an information notice about its decision to extend the time to—

- (a) the person (the “**submitter**”) who submitted the draft plan; and
- (b) if the submitter is not the land’s owner—the owner.

(3) The notice must be given before the extension starts.

Failure to approve draft site management plan taken to be refusal

416. If the administering authority fails to decide whether to approve or refuse a draft site management plan within the time it is required to make a decision on the plan, the failure is taken to be a decision by the authority to refuse to approve the plan at the end of the time.

Subdivision 3—Restriction on local government approvals and authorities

Approval or authority must not allow contravention of site management plan

417. A local government must not, under an approval or other authority under the Integrated Planning Act or any other Act, allow the use or development of, or an activity to be carried out on, land in a way that contravenes a site management plan for the land.

Subdivision 4—Amendment of site management plan**Voluntary amendment of site management plans**

418. Subdivision 2 (other than sections 405 to 407 and 409)⁸⁹ applies, with all necessary changes, to the submission by a person of a draft amendment of a site management plan.

Administering authority may amend or require amendment of site management plan

419.(1) The administering authority may amend a site management plan for land with the agreement of—

- (a) the land's owner; and
- (b) if the owner is not the occupier of the land—the occupier.

(2) Also, if the administering authority considers it necessary or desirable, the administering authority may—

- (a) prepare an amendment of a site management plan; or
- (b) require a draft amendment of a site management plan to be prepared and submitted to it for approval by—
 - (i) if the person who released the contaminant is known and can be located—the person; or
 - (ii) the relevant local government; or
 - (iii) the owner of the land.

(3) If the administering authority prepares an amendment to a site management plan, or requires an amendment to be prepared, subdivision 2

⁸⁹ Sections 405 (Administering authority may prepare or require site management plan), 406 (Requirement to prepare draft site management plan), 407 (Waiver of requirement to prepare or commission site management plan) and 409 (Procedure to be followed if recipient is not owner)

(other than sections 403, 404 and 405(1))⁹⁰ applies, with all necessary changes, to the preparation of the draft amendment.

Division 6—Notices to be given about land recorded in registers

Notice to be given about recording of land in contaminated land register

420.(1) This section applies if—

- (a) particulars of land are recorded in the contaminated land register; and
- (b) the owner of the land has entered into, or proposes to enter into, an agreement with another person about occupancy of the land.

(2) The owner must—

- (a) if, at the time the particulars are recorded, the owner has entered into an agreement with another person about occupancy of the land—give the person notice that particulars of the land have been recorded in the register; or
- (b) if, after the particulars are recorded, the owner proposes to enter into an agreement with another person about occupancy of the land—give notice about the recording of the particulars to the person before entering into the agreement.

Maximum penalty—50 penalty units.

(3) If the owner does not give notice as required under subsection (2), the other person who has entered into the occupancy agreement may terminate the agreement by written notice given to the owner within 10 days after the person becomes aware of the recording.

(4) Subsection (3) applies despite anything to the contrary in the agreement.

⁹⁰ Sections 403 (Voluntary submission of draft site management plan), 404 (Application for approval of site management plan) and 405 (Administering authority may prepare or require site management plan)

Notice to be given to proposed purchaser of land

421.(1) This section applies to the owner of land if—

- (a) particulars of the land are recorded in the environmental management register or contaminated land register; or
- (b) the land is the subject of—
 - (i) a notice under section 373 informing the owner that the administering authority believes the land has been, or is being, used for a notifiable activity or is contaminated land; or
 - (ii) a notice to conduct or commission a site investigation; or
 - (iii) a remediation notice; or
 - (iv) a notice that the administering authority is preparing, or requiring someone else to prepare, a site management plan for the land; or
- (c) the land is the subject of an order under section 458.⁹¹

(2) If the owner proposes to dispose of the land to someone else (the “**buyer**”), the owner must, before agreeing to dispose of the land, give written notice to the buyer—

- (a) if particulars of the land are recorded in the environmental management register or contaminated land register—that the particulars have been recorded in the register and, if the land is subject to a site management plan, details of the plan; or
- (b) if the owner has been given a notice under this part—that the owner has been given a notice under this part and particulars about the notice; or
- (c) if the land is the subject of an order under section 458—that the land is the subject of the order and particulars about the order.

Maximum penalty—50 penalty units.

(3) If the owner does not comply with subsection (2), the buyer may rescind the agreement by written notice given to the owner before the completion of the agreement or possession under the agreement, whichever

⁹¹ Section 458 (Order to enter land to conduct investigation or conduct work)

is the earlier.

(4) On rescission of the agreement under subsection (3)—

- (a) a person who was paid amounts by the buyer under the agreement must refund the amounts to the buyer; and
- (b) the buyer must return to the owner any documents about the disposal (other than the buyer's copy of the agreement).

(5) Subsections (3) and (4) apply despite anything to the contrary in the agreement.

Division 7—Miscellaneous

Registrar to maintain records about contaminated land

422.(1) The administering authority must, within 10 days after recording particulars of land in the contaminated land register, give the registrar written notice the record has been made.

(2) The registrar must maintain records that show the land stated in the notice is recorded in the contaminated land register.

(3) The registrar must maintain the records in a way that a search of the register maintained by the registrar under any Act relating to the land will show particulars of the land are recorded in the contaminated land register.

(4) The administering authority must, within 10 days after removing particulars of land from the contaminated land register or making another change to the record about the land, give the registrar written notice about the removal or change.

(5) The registrar must, on receipt of a notice under subsection (4)—

- (a) for a notice about the removal of land from the contaminated land register—remove the particulars of the land from the registrar's records; or
- (b) for a notice about a change to a record about land in the contaminated land register—make the appropriate change to the registrar's record.

Offence to destroy etc. signs

423.(1) The administering authority may erect, on contaminated land, a sign regulating access to the land.

(2) However, if the contaminated land is not land for which particulars are recorded on the environmental management register or contaminated land register, the administering authority must, before erecting the sign, give the owner of the land an information notice about the decision to erect the sign.

(3) A sign erected on contaminated land must be erected—

- (a) at a place where persons might reasonably be expected to enter the land; and
- (b) in a way that makes the sign visible to persons intending to enter the land.

(4) A person must not enter the land in contravention of the sign unless the person has a reasonable excuse for the entry.

Maximum penalty—10 penalty units.

(5) A person must not destroy, damage, mark, deface or in any other way interfere with the sign unless the person has a reasonable excuse for the destruction, damage, marking, defacement or other interference.

Maximum penalty—10 penalty units.

Removal and treatment or disposal of contaminated soil

424.(1) A person must not, without a disposal permit—

- (a) remove and treat or dispose of contaminated soil from land for which particulars are recorded in the environmental management register or contaminated land register; or
- (b) bring into the State and treat or dispose of contaminated soil from contaminated land outside the State.

Maximum penalty—100 penalty units.

(2) An application for a disposal permit must—

- (a) be in the approved form; and

- (b) be supported by enough information to enable the administering authority to decide the application, including, for example, relevant information about the likely risks to the environment and how it is intended to dispose of the contaminated soil; and
- (c) be accompanied by the application fee prescribed under a regulation.

(3) The administering authority must decide the application within 14 days after receiving it.

(4) In making its decision whether to grant or refuse an application for a disposal permit, or the conditions of the permit, the administering authority must consider the standard criteria.

(5) The administering authority must within 10 days after making its decision—

- (a) if the decision is to grant the application—give the applicant the permit; and
- (b) if the decision is to grant the application but to impose conditions on the permit—give the applicant an information notice about the decision to impose the conditions; or
- (c) if the decision is to refuse the application—give the applicant an information notice about the decision.

(6) If the administering authority fails to make a decision about an application for a disposal permit within the time it is required to make a decision on the application, the failure is taken to be a decision by the authority to refuse the application at the end of the time.

(7) A disposal permit takes effect from the day of its issue, or a later day stated in it, and continues in force for the term stated in it.

(8) This section does not apply if the person is removing and disposing of the soil under a remediation notice.

Failure to comply with disposal permit

425. The holder of, or a person acting under, a disposal permit, must comply with the conditions of the permit.

Maximum penalty—100 penalty units.

CHAPTER 8—GENERAL ENVIRONMENTAL OFFENCES

PART 1—OFFENCES RELATING TO ENVIRONMENTALLY RELEVANT ACTIVITIES

Division 1—Offences

Environmental authority required for level 1 environmentally relevant activity

426.(1) A person must not carry out a level 1 environmentally relevant activity unless the person holds, or is acting under—

- (a) if the activity is a mining activity—a non-standard environmental authority (mining activities); or
- (b) if the activity is not a mining activity—a licence or a level 1 approval.

Maximum penalty—400 penalty units.

(2) This section is subject to section 140.⁹²

Environmental authority or development approval required for level 2 environmentally relevant activity

427.(1) A person must not carry out a level 2 environmentally relevant activity unless—

- (a) a development approval has been given for the activity; or
- (b) the person holds, or is acting under—
 - (i) if the activity is a standard mining activity—a standard environmental authority (mining activities); or
 - (ii) if the activity is not a standard mining activity—a level 2

⁹² Section 140 (Environmental authorities for new environmentally relevant activities)

approval.

Maximum penalty—165 penalty units.

(2) This section is subject to section 140.⁹³

New approval required for certain activities if significant change

428.(1) This section applies if—

- (a) a person who holds a level 2 approval proposes to carry out works for the construction or alteration of a building or structure, or for the installation or alteration of plant or equipment, for carrying out the environmentally relevant activity concerned; and
- (b) the construction, alteration or installation will result in an increase of 10% or more in the release of contaminant into the environment under the approval.

(2) The person must not carry out the works without a level 2 approval to carry out the activity on the basis of the increased quantity of contaminant to be released into the environment.

Maximum penalty for subsection (2)—100 penalty units.

Division 2—Exemptions

Special provisions for interstate transporters of controlled waste

429.(1) Sections 426 and 427 do not apply to a person carrying out the interstate transportation of controlled waste if—

- (a) the person holds, or is acting under, an interstate licence; and
- (b) the licence authorises the transportation; and
- (c) the conditions of the licence are, to the extent they are relevant to the transportation, complied with; and

⁹³ See also chapter 13, part 2, division 4, subdivision 2 (Special provisions for transitional authorities) and section 594 (Limited application of s 427 for transitional authority).

Environmental Protection Act 1994

- (d) a consignment authorisation or number for the transportation has been issued under the law of the State into which the waste is to be transported;⁹⁴ and
- (e) the following documents, or copies of the following documents, are carried in the vehicle transporting the waste while the waste is being transported in Queensland—
 - (i) the interstate licence;
 - (ii) the consignment authorisation or a document containing the consignment number.

(2) However, while the waste is being transported in Queensland, this Act applies, with necessary changes, to the person and the transportation as if—

- (a) a reference in this Act to an environmental authority includes a reference to the interstate licence and any conditions of the licence; and
- (b) the interstate licence and the consignment authorisation or document containing the consignment number are documents required to be held or kept under this Act; and
- (c) the transportation were an environmentally relevant activity to which the licence relates; and
- (d) the vehicle is a place to which the licence relates.

(3) In this section—

“controlled waste” has the meaning given under the ‘National Environment Protection (Movement of Controlled Waste) between States and Territories) Measure, made by the National Environment Protection Council on 26 June 1998 under the national scheme laws and notified in the Commonwealth Gazette No. G 27 on 8 July 1998 at page 2212.

“interstate licence” means an authority, instrument, licence or permit, however called, that is similar to an environmental authority, issued

⁹⁴ For transportation into Queensland, see the *Environmental Protection (Waste Management) Regulation 2000*, section 38 (Consignment numbers for waste transported into Queensland).

under a corresponding law.

“interstate transportation”, of controlled waste, means the transportation of controlled waste from—

- (a) a place in Queensland to a place in another State; or
- (b) a place in another State to a place in Queensland; or
- (c) a place in another State through Queensland to a place in another State.

PART 2—OFFENCES RELATING TO ENVIRONMENTAL REQUIREMENTS AND DEVELOPMENT APPROVALS

Division 1—Environmental authorities

Contravention of condition of environmental authority

430.(1) This section applies to a person who is the holder of, or is acting under, an environmental authority.

(2) The person must not wilfully contravene a condition of the authority.

Maximum penalty—

- (a) for a licence, a level 1 approval or for a non-standard environmental authority (mining activities)—2 000 penalty units or 2 years imprisonment; or
- (b) for a level 2 approval or for a standard environmental authority (mining activities)—300 penalty units.

(3) The person must not contravene a condition of the authority.

Maximum penalty—

- (a) for a licence, a level 1 approval or for a non-standard environmental authority (mining activities)—1 665 penalty units; or

- (b) for a level 2 approval or for a standard environmental authority (mining activities)—250 penalty units.

(4) In a proceeding for an offence against subsection (2), if the court is not satisfied the defendant is guilty of the offence charged but is satisfied the defendant is guilty of an offence against subsection (3), the court may find the defendant guilty of the offence against subsection (3).

Environmental authority holder responsible for ensuring conditions complied with

431.(1) The holder of an environmental authority must ensure everyone acting under the authority complies with the conditions of the authority.

(2) If another person acting under the authority commits an offence against section 430, the holder also commits an offence, namely, the offence of failing to ensure the other person complied with the conditions.

Maximum penalty—the penalty under section 430(2) or (3) for the contravention of the conditions.

(3) Evidence that the other person has been convicted of an offence against section 430 while acting under the authority is evidence that the holder committed the offence of failing to ensure the other person complies with the conditions.

(4) However, it is a defence for the holder to prove—

- (a) the holder issued appropriate instructions and used all reasonable precautions to ensure compliance with the conditions; and
- (b) the offence was committed without the holder's knowledge; and
- (c) the holder could not by the exercise of reasonable diligence have stopped the commission of the offence.

Division 2—Environmental management programs

Contravention of program

432.(1) The holder of an approval of an environmental management program, or a person acting under an environmental management program,

must not wilfully contravene the program.

Maximum penalty—1 665 penalty units or 2 years imprisonment.

(2) The holder of an approval of an environmental management program, or a person acting under an environmental management program, must not contravene the program.

Maximum penalty—835 penalty units.

(3) In a proceeding for an offence against subsection (1), if the court is not satisfied the defendant is guilty of the offence charged but is satisfied the defendant is guilty of an offence against subsection (2), the court may find the defendant guilty of the offence against subsection (2).

Approval holder responsible for ensuring program complied with

433.(1) The holder of an approval of an environmental management program must ensure everyone acting under the program complies with the program.

(2) If another person acting under the program commits an offence against section 432, the holder also commits an offence, namely, the offence of failing to ensure the other person complies with the program.

Maximum penalty—the penalty under section 432(1) or (2) for the contravention of the program.

(3) Evidence that the other person has been convicted of an offence against section 432 while acting under the program is evidence that the holder committed the offence of failing to ensure the other person complied with the program.

(4) However, it is a defence for the holder to prove—

- (a) the holder issued appropriate instructions and used all reasonable precautions to ensure compliance with the program; and
- (b) the offence was committed without the holder's knowledge; and
- (c) the holder could not by the exercise of reasonable diligence have stopped the commission of the offence.

Division 3—Site management plans**Contravention of plan**

434.(1) A person must not wilfully contravene a site management plan.

Maximum penalty—1 665 penalty units or 2 years imprisonment.

(2) A person must not contravene a site management plan.

Maximum penalty—835 penalty units.

(3) In a proceeding for an offence against subsection (1), if the court is not satisfied the defendant is guilty of the offence charged but is satisfied the defendant is guilty of an offence against subsection (2), the court may find the defendant guilty of the offence against subsection (2).

Division 4—Development approvals**Offence to contravene development condition**

435.(1) A person must not wilfully contravene a development condition of a development approval.

Maximum penalty—2 000 penalty units or 2 years imprisonment.

(2) A person must not contravene a development condition of a development approval.

Maximum penalty—1 665 penalty units.

(3) In a proceeding for an offence against subsection (1), if the court is not satisfied the defendant is guilty of the offence charged but is satisfied the defendant is guilty of an offence against subsection (2), the court may find the defendant guilty of the offence against subsection (2).

PART 3—OFFENCES RELATING TO ENVIRONMENTAL HARM

Unlawful environmental harm

436.(1) An act or omission that causes serious or material environmental harm or an environmental nuisance is unlawful (“**unlawful environmental harm**”) unless it is authorised to be done or omitted to be done under—

- (a) an environmental protection policy; or
- (b) an environmental management program; or
- (c) an environmental protection order; or
- (d) an environmental authority; or
- (e) a development condition of a development approval; or
- (f) an emergency direction.

(2) However, it is a defence to a charge of unlawfully causing environmental harm to prove—

- (a) the harm happened while an activity (that is lawful apart from this Act) was being carried out; and
- (b) the defendant complied with the general environmental duty.

(3) The defendant is taken to have complied with the duty if the defendant proves—

- (a) an approved code of practice or a code of environmental compliance applies to the causing of the environmental harm; and
- (b) to the extent it is relevant, the defendant complied with the code.

Offences of causing serious environmental harm

437.(1) A person must not wilfully and unlawfully cause serious environmental harm.

Maximum penalty—4 165 penalty units or 5 years imprisonment.

(2) A person must not unlawfully cause serious environmental harm.

Maximum penalty—1 665 penalty units.

(3) In a proceeding for an offence against subsection (1), if the court is not satisfied the defendant is guilty of the offence charged but is satisfied the defendant is guilty of an offence against subsection (2), the court may find the defendant guilty of the offence against subsection (2).

Offences of causing material environmental harm

438.(1) A person must not wilfully and unlawfully cause material environmental harm.

Maximum penalty—1 665 penalty units or 2 years imprisonment.

(2) A person must not unlawfully cause material environmental harm.

Maximum penalty—835 penalty units.

(3) In a proceeding for an offence against subsection (1), if the court is not satisfied the defendant is guilty of the offence charged but is satisfied the defendant is guilty of an offence against subsection (2), the court may find the defendant guilty of the offence against subsection (2).

Court may find defendant guilty of causing material environmental harm if charged with causing serious environmental harm

439. In a proceeding for an offence against section 437, if the court is not satisfied the defendant is guilty of the offence charged but is satisfied the defendant is guilty of an offence against section 438(1) or (2), the court may find the defendant guilty of the offence against section 438(1) or (2).

Offence of causing environmental nuisance

440.(1) A person must not wilfully and unlawfully cause an environmental nuisance.

Maximum penalty—835 penalty units.

(2) A person must not unlawfully cause an environmental nuisance.

Maximum penalty—165 penalty units.

(3) In a proceeding for an offence against subsection (1), if the court is not satisfied the defendant is guilty of the offence charged but is satisfied the

defendant is guilty of an offence against subsection (2), the court may find the defendant guilty of the offence against subsection (2).

PART 4—OTHER OFFENCES

Offences of contravention of environmental protection policies

441.(1) A person must not wilfully contravene an environmental protection policy.

Maximum penalty—

- (a) for a class 1 environmental offence—1 665 penalty units or imprisonment for 2 years;
- (b) for a class 2 environmental offence—835 penalty units;
- (c) for a class 3 environmental offence—85 penalty units.

(2) A person must not contravene an environmental protection policy.

Maximum penalty—

- (a) for a class 1 environmental offence—835 penalty units;
- (b) for a class 2 environmental offence—165 penalty units;
- (c) for a class 3 environmental offence—50 penalty units.

(3) For subsections (1) and (2), an offence of contravening an environmental protection policy is a class 1, 2 or 3 environmental offence if the policy declares the offence to be an offence of that class.

(4) In a proceeding for an offence against subsection (1), if the court is not satisfied the defendant is guilty of the offence charged but is satisfied the defendant is guilty of an offence against subsection (2), the court may find the defendant guilty of the offence against subsection (2).

Offence of releasing prescribed contaminant

442.(1) In this section—

“prescribed contaminant” means a contaminant prescribed by an

environmental protection policy for this section.

(2) A person must not release, or cause to be released, a prescribed contaminant into the environment other than under an authorised person's emergency direction.

Maximum penalty—165 penalty units.

Offence to place contaminant where environmental harm or nuisance may be caused

443. A person must not cause or allow a contaminant to be placed in a position where it could reasonably be expected to cause serious or material environmental harm or environmental nuisance.

Maximum penalty—165 penalty units.

Offence of interfering with monitoring equipment

444. A person must not interfere with any monitoring equipment used under this Act or a development condition of a development approval.

Maximum penalty—165 penalty units.

CHAPTER 9—INVESTIGATION AND ENFORCEMENT

PART 1—ADMINISTRATION GENERALLY

Appointment of authorised persons

445.(1) The chief executive may appoint any of the following persons to be an authorised person—

- (a) an appropriately qualified public service officer;
- (b) an employee of the department;
- (c) a person included in a class of persons declared by regulation to

be an approved class of persons for this section.

(2) If the administration and enforcement of a matter is devolved to a local government, the local government's chief executive officer may appoint an employee of the local government to be an authorised person.

(3) A person may be appointed to be an authorised person only if, in the opinion of the chief executive or local government's chief executive officer, the person has the necessary expertise or experience to be an authorised person.

Terms of appointment of authorised persons

446.(1) An authorised person holds office on the conditions stated in the instrument of appointment.

(2) An authorised person appointed under section 445(1)(c)—

- (a) is appointed for the term stated in the instrument of appointment; and
- (b) may resign by signed notice given to the chief executive.

(3) An authorised person ceases to hold office—

- (a) if the authorised person was appointed under section 445(1)(a)—if the authorised person ceases to be an appropriately qualified public service officer; or
- (b) if the authorised person was appointed under section 445(1)(b)—if the authorised person ceases to be an employee of the department; or
- (c) if the authorised person was appointed under section 445(1)(c)—if the authorised person ceases to be a member of the relevant class of persons; or
- (d) if the authorised person was appointed under section 445(2)—if the authorised person ceases to be an employee of the local government.

Powers of authorised persons

447.(1) An authorised person has the powers given under this or another

Act.

(2) Subsection (1) has effect subject to any limitations—

- (a) stated in the authorised person's instrument of appointment; or
- (b) prescribed by regulation.

(3) An authorised person appointed under section 445(2) may exercise powers only for the administration and enforcement of the matter the subject of a devolution to the local government of which the authorised person is an employee.

Issue of identity cards

448.(1) The administering executive must issue an identity card to each authorised person.

(2) The identity card must—

- (a) contain a recent photograph of the authorised person; and
- (b) be signed by the authorised person; and
- (c) identify the person as an authorised person; and
- (d) include an expiry date.

(3) Nothing in this section prevents the issue of a single identity card to a person for this Act and other Acts.

Production of identity card

449.(1) An authorised person may exercise a power in relation to someone else only if the authorised person—

- (a) first produces his or her identity card for the person's inspection;
or
- (b) has his or her identity card displayed so that it is clearly visible to the person.

(2) If, for any reason, it is not practicable to comply with subsection (1), the authorised person must produce the identity card for inspection by the person at the first reasonable opportunity.

Protection from liability

450.(1) In this section—

“official” means—

- (a) an authorised person; or
- (b) a person acting under the direction of an authorised person.

(2) An official does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.

(3) If subsection (2) prevents a civil liability attaching to an official, the liability attaches instead to—

- (a) if the official is, or is acting under the direction of, an authorised person appointed by the chief executive officer of a local government—the local government; or
- (b) if paragraph (a) does not apply—the State.

Administering authority may require relevant information

451.(1) The administering authority may give a notice under this section to a person requiring the person to give it information relevant to the administration or enforcement of this Act.

(2) The notice may only be given to a person the authority suspects on reasonable grounds has knowledge of a matter, or has possession or control of a document dealing with a matter, for which the information is required.

(3) The notice must—

- (a) be in the approved form; and
- (b) state the person to whom it is issued; and
- (c) state the information required; and
- (d) state the time within which the information is to be given to the authority; and
- (e) state why the information is required; and
- (f) state the review or appeal details; and
- (g) be given to the person.

PART 2—POWERS OF AUTHORISED PERSONS FOR PLACES AND VEHICLES

Entry of place—general

452.(1) An authorised person may enter a place if—

- (a) its occupier consents to the entry and, if the entry is for exercising a power under chapter 7, part 8, its owner consents; or
- (b) it is a public place and the entry is made when the place is open to the public; or
- (c) it is a place to which an environmental authority or a development approval subject to a development condition relates and the entry is made when—
 - (i) the environmentally relevant activity to which the authority or approval relates is being carried out; or
 - (ii) the place is open for conduct of business; or
 - (iii) is otherwise open for entry; or
- (d) it is a place where an industry is conducted and the entry is made when—
 - (i) the place is open for conduct of business; or
 - (ii) is otherwise open for entry; or
- (e) the entry is authorised by a warrant; or
- (f) for land mentioned in chapter 7, part 8—the entry is authorised by an order under section 458; or
- (g) the authorised person may enter the place under section 453, 454 or 455.

(2) For the purpose of asking the occupier of a place for consent to enter, an authorised person may, without the occupier's consent or a warrant—

- (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
- (b) enter part of the place the authorised person reasonably considers members of the public ordinarily are allowed to enter when they

wish to contact the occupier.⁹⁵

(3) Unless the entry is made under the authority of a warrant or order, the entry must be made at a reasonable time.

Entry of land—search, test, sample etc. for release of contaminant

453.(1) In this section—

“**land**” means a parcel of land other than the part on which a building or structure of any kind is erected.

(2) This section applies if unlawful environmental harm has been caused by the release of a contaminant into the environment.

(3) An authorised person may enter land for the purpose of finding out or confirming the source of the release of the contaminant.

(4) The authorised person may exercise powers under subsection (3), at the time, with the help, and using the force, that is necessary and reasonable in the circumstances.

Entry of land—preliminary investigation

454.(1) This section applies if the administering authority believes on reasonable grounds land is contaminated land.

Example—

The administering authority may, as a result of investigations conducted in an area, become aware contaminated fill has been used in the area. In the circumstances, the administering authority may believe on reasonable grounds individual lots of land in the area are contaminated land.

(2) An authorised person may, under this section, enter the land to conduct a preliminary investigation.

(3) A power under subsection (2) may be exercised only—

- (a) with the agreement of the owner and occupier of the land; or
- (b) if the administering authority has given at least 7 days written notice to the owner and occupier.

⁹⁵ See also section 485 (Consent to entry).

(4) The notice must inform the owner and occupier—

- (a) the administering authority reasonably believes the land is contaminated land; and
- (b) an authorised person intends to enter the land; and
- (c) the purpose of the entry; and
- (d) the days and times when the entry is to be made.

(5) In exercising a power under subsection (2), the authorised person must take all reasonable steps to ensure the person causes as little inconvenience, and does as little damage, as is practicable in the circumstances.

(6) Nothing in this section authorises the authorised person to enter a structure, or part of a structure, used for residential purposes.

Entry of land for access

455.(1) This section applies if—

- (a) an authorised person may enter land (the “**primary land**”) under section 452 or 454; and
- (b) it is necessary or desirable to cross other land (the “**access land**”) to enter the primary land.

(2) The authorised person may enter the access land and take into or over it anything the person reasonably requires for exercising a power under section 460 in relation to the primary land—

- (a) if the person obtains the consent of the occupier of the access land; or
- (b) if the person gives at least 7 days written notice to the occupier before the entry; or
- (c) without the consent of, or notice to, the occupier, if the person—
 - (i) believes on reasonable grounds there is an imminent risk of environmental harm being caused to or from the primary land; and
 - (ii) has told, or has made a reasonable attempt to tell, the occupier that the person is permitted to enter the access land

under this paragraph.

(3) A notice under subsection (2)(b) must—

- (a) describe the primary land and the access land; and
- (b) state—
 - (i) that the authorised person intends to enter the access land for entry to the primary land; and
 - (ii) the day and time the access land will be entered; and
 - (iii) that an owner or occupier of the access land may claim compensation under section 487 for loss or damage caused by the entry to the access land.

(4) In exercising a power under this section, the authorised person must take all reasonable steps to ensure the person causes as little inconvenience, and does as little damage, as is practicable.

(5) Nothing in this section authorises the authorised person to enter a structure, or part of a structure, used for residential purposes.

(6) This section does not limit section 452 or 454.

Warrants

456.(1) An authorised person may apply to a magistrate for a warrant for a place.

(2) An application must be sworn and state the grounds on which the warrant is sought.

(3) The magistrate may refuse to consider the application until the authorised person gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

Example—

The magistrate may require additional information supporting the application to be given by statutory declaration.

(4) The magistrate may issue a warrant only if the magistrate is satisfied there are reasonable grounds for suspecting—

- (a) there is a particular thing or activity (the “**evidence**”) that may provide evidence of the commission of an offence against this

Act; and

(b) the evidence is, or may be within the next 7 days, at the place.

(5) The warrant must state—

(a) that the authorised person may, with necessary and reasonable help and force, enter the place and exercise the authorised person's powers under this Act; and

(b) the evidence for which the warrant is issued; and

(c) the hours of the day when entry may be made; and

(d) the day (within 14 days after the warrant's issue) when the warrant ends.

(6) The magistrate must record the reasons for issuing the warrant.

Warrants—applications made otherwise than in person

457.(1) An authorised person may apply for a warrant by phone, fax, radio or another form of communication if the authorised person considers it necessary because of—

(a) urgent circumstances; or

(b) other special circumstances, including, for example, the authorised person's remote location.

(2) Before applying for the warrant, the authorised person must prepare an application stating the grounds on which the warrant is sought.

(3) The authorised person may apply for the warrant before the application is sworn.

(4) After issuing the warrant, the magistrate must immediately fax a copy to the authorised person if it is reasonably practicable to fax the copy.

(5) If it is not reasonably practicable to fax a copy of the warrant to the authorised person—

(a) the magistrate must—

(i) tell the authorised person what the terms of the warrant are; and

(ii) tell the authorised person the date and time the warrant was

signed; and

(iii) record on the warrant the reasons for issuing the warrant; and

(b) the authorised person must write on a form of warrant (“**warrant form**”)—

(i) the magistrate’s name; and

(ii) the date and time the magistrate signed the warrant; and

(iii) the warrant’s terms.

(6) The facsimile warrant, or the warrant form properly completed by the authorised person, authorises the entry and the exercise of the other powers authorised by the warrant issued by the magistrate.

(7) The authorised person must, at the first reasonable opportunity, send to the magistrate—

(a) the sworn application; and

(b) if a warrant form was completed by the authorised person—the completed warrant form.

(8) On receiving the documents, the magistrate must attach them to the warrant.

(9) Unless the contrary is proved, a court must presume that a power exercised by an authorised person was not authorised by a warrant issued under this section if—

(a) a question arises, in a proceeding before the court, whether the exercise of power was authorised by a warrant; and

(b) the warrant is not produced in evidence.

Order to enter land to conduct investigation or conduct work

458.(1) An authorised person may apply to a magistrate for an order to enter land—

(a) to carry out work on the land to—

(i) prevent or minimise environmental harm or rehabilitate or restore the land because of an activity carried out under an

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environmental authority, environmental management program or site management plan; or

- (ii) remediate land managed under a site management plan; or
 - (iii) secure compliance with an environmental authority, environmental management program, site management plan or any conditions of the authority program or plan; or
- (b) if the land is contaminated land—to conduct a site investigation of the land; or
- (c) for land particulars of which are recorded in the contaminated land register—to conduct work to remediate the land.

(2) The administering authority must give written notice of the application to—

- (a) the owner of the land; and
- (b) if the owner is not the occupier of the land—the occupier; and
- (c) if the application is for an order to carry out work mentioned in subsection (1)(a)—
 - (i) the environmental authority holder; or
 - (ii) environmental management program approval holder.

(3) The application for the order must be sworn and state the grounds on which it is made.

(4) The magistrate may refuse to consider the application until the person gives the magistrate all information the magistrate requires about the application in the way the magistrate requires.

Example—

The magistrate may require additional information supporting the application to be given by statutory declaration.

(5) The magistrate may make an order under this section only if the magistrate is satisfied—

- (a) for an order to carry out work mentioned in subsection (1)(a), the entry sought is reasonable and necessary to carry out the work; or
- (b) for an order to enter the land and carry out a site investigation—
 - (i) the land is listed in the environmental management register

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- because it is contaminated land; and
- (ii) the hazardous contaminant contaminating the land is in a concentration that has the potential to cause serious environmental harm; and
 - (iii) a person, animal or another part of the environment may be exposed to the hazardous contaminant; and
 - (iv) the entry sought is reasonable and necessary to conduct a site investigation of the land; or
- (c) for an order to enter and conduct work to remediate the land—the magistrate is satisfied the land is contaminated and the entry sought is reasonable and necessary to conduct work to remediate the land.
- (6) The order must state—
- (a) that an authorised person may, with necessary and reasonable help and force, enter the land and conduct the investigation or work to remediate the land; and
 - (b) the hours of the day when the entry may be made; and
 - (c) the day when the order ends.
- (7) The magistrate must record the reasons for making the order.

Entry or boarding of vehicles

459.(1) An authorised person may enter or board a vehicle if the authorised person has reasonable grounds for suspecting—

- (a) the vehicle is being, or has been, used in the commission of an offence against this Act; or
 - (b) the vehicle, or a thing in or on the vehicle, may provide evidence of the commission of an offence against this Act; or
 - (c) the vehicle is of a type prescribed by regulation and is being used to transport waste of a type prescribed by regulation; or
 - (d) if the vehicle is a train—the train is being used to transport waste of a type prescribed by regulation.
- (2) If the vehicle is moving or about to move, the authorised person may

signal the person in control of the vehicle to stop the vehicle or not to move it.

(3) To enable the vehicle to be entered or boarded, the authorised person may—

- (a) act with necessary and reasonable help and force; and
- (b) require the person in control of the vehicle to give reasonable help to the authorised person.

General powers for places and vehicles

460.(1) An authorised person who enters a place, or enters or boards a vehicle, under this chapter may—

- (a) search any part of the place or vehicle; or
- (b) inspect, examine, test, measure, photograph or film the place or vehicle or anything in or on the place or vehicle; or
- (c) take samples of any contaminant, substance or thing in or on the place or vehicle; or
- (d) record, measure, test or analyse the release of contaminants into the environment from the place or vehicle; or
- (e) take extracts from, or make copies of, any documents in or on the place or vehicle; or
- (f) take into or onto the place or vehicle any persons, equipment and materials the authorised person reasonably requires for the purpose of exercising any powers in relation to the place or vehicle; or
- (g) install or maintain any equipment and materials in or on the place or vehicle the authorised person reasonably requires for the purpose of conducting a monitoring program for the release of contaminants into the environment from the place or vehicle; or
- (h) require the occupier of the place, or any person in or on the place or vehicle, to give to the authorised person reasonable help for the exercise of the powers mentioned in paragraphs (a) to (g); or
- (i) if the authorised person enters or boards a vehicle—by written

notice given to the person in control of the vehicle, require the person—

- (i) to take the vehicle to a stated reasonable place by a stated reasonable time; and
- (ii) if necessary, to remain in control of the vehicle at the place for a reasonable time;

to enable the authorised person to exercise the powers mentioned in paragraphs (a) to (g).

(2) However, subsection (1)(e) does not apply to an authorised person who enters land to conduct a preliminary investigation or site investigation.

(3) If, for any reason, it is not practicable to make a requirement under subsection (1)(i) by written notice, the requirement may be made orally and confirmed by written notice as soon as practicable.

(4) Nothing in this section prevents an authorised person making a further requirement under subsection (1)(i) of the same person or another person in relation to the same vehicle if it is necessary and reasonable to make the further requirement.

(5) An authorised person may not enter a part of a vehicle used only as a living area, or exercise a power under subsection (1)(a) to (g) in relation to that part, unless the authorised person is accompanied by the person in control of the vehicle.

(6) Subsection (4) does not apply if the person in control of the vehicle is unavailable or unwilling to accompany the authorised person or the authorised person is unable for another reason to comply with the subsection.

(7) This section does not apply to an authorised person who enters a place to get the occupier's consent unless the consent is given or the entry is otherwise authorised.

(8) This section does not limit any power that an authorised person has apart from this section.

Power to seize evidence

461.(1) An authorised person who enters a place under this chapter with

a warrant may seize the evidence for which the warrant was issued.

(2) An authorised person who enters a place under this chapter with the occupier's consent may seize the particular thing for which the entry was made if the authorised person believes on reasonable grounds that the thing is evidence of an offence against this Act.

(3) An authorised person who enters a place under this chapter with a warrant or with the occupier's consent may also seize another thing if the authorised person believes on reasonable grounds—

- (a) the thing is evidence of an offence against this Act; and
- (b) the seizure is necessary to prevent the thing being—
 - (i) concealed, lost or destroyed; or
 - (ii) used to commit, continue or repeat the offence.

(4) An authorised person who enters a place under this chapter other than with a warrant or with the occupier's consent, or who enters or boards a vehicle, may seize a thing if the authorised person believes on reasonable grounds—

- (a) the thing is evidence of an offence against this Act; and
- (b) the seizure is necessary to prevent the thing being—
 - (i) concealed, lost or destroyed; or
 - (ii) used to commit, continue or repeat the offence.

Procedure after seizure of evidence

462.(1) As soon as practicable after a thing is seized by an authorised person under this chapter, the authorised person must give a receipt for it to the person from whom it was seized.

(2) The receipt must describe generally each thing seized and its condition.

(3) If, for any reason, it is not practicable to comply with subsection (1), the authorised person must—

- (a) leave the receipt at the place of seizure; and
- (b) ensure the receipt is left in a reasonably secure way and in a

conspicuous position.

(4) The authorised person must allow a person who would be entitled to the seized thing if it were not in the authorised person's possession to inspect it and, if it is a document, to take extracts from it or make copies of it.

(5) The authorised person must return the seized thing to its owner at the end of—

- (a) 6 months; or
- (b) if a prosecution for an offence involving it is started within the 6 months—the prosecution for the offence and any appeal from the prosecution.

(6) Despite subsection (4), the authorised person must return the seized thing to its owner immediately the authorised person stops being satisfied its retention as evidence is necessary.

(7) However, the authorised person may keep the seized thing if the authorised person believes, on reasonable grounds, it is necessary to continue to keep it to prevent its use in committing an offence.

Forfeiture of seized thing on conviction

463.(1) Despite section 462, if the owner of the seized thing is convicted of an offence for which the thing was retained as evidence, the court may order its forfeiture to—

- (a) if the authorised person exercised the power of seizure in the enforcement of a matter devolved to a local government—the local government; or
- (b) if paragraph (a) does not apply—the State.

(2) The forfeited thing becomes the property of the local government or State and may be destroyed or disposed of as directed by the administering executive.

(3) This section does not limit the court's powers under the *Penalties and Sentences Act 1992* or any other law.

PART 3—OTHER ENFORCEMENT POWERS OF AUTHORISED PERSONS

Power to require name and address

464.(1) An authorised person may require a person to state the person's name and address if the authorised person—

- (a) finds the person committing an offence against this Act; or
- (b) finds the person in circumstances that lead, or has information that leads, the authorised person to suspect on reasonable grounds that the person has committed an offence against this Act.

(2) When making the requirement, the authorised person must warn the person that it is an offence against this Act to fail to state the person's name and address, unless the person has a reasonable excuse.

(3) The authorised person may require the person to give evidence of the correctness of the person's name or address if the authorised person suspects on reasonable grounds that the name or address given is false.

Power to require answers to questions

465.(1) This section applies if an authorised person suspects, on reasonable grounds, that—

- (a) an offence against this Act has happened; and
- (b) a person may be able to give information about the offence.

(2) The authorised person may require the person to answer a question about the offence.

(3) When making the requirement, the authorised person must warn the person it is an offence to fail to comply with the requirement, unless the person has a reasonable excuse.

Power to require production of documents

466.(1) An authorised person may require a person to produce to the authorised person for inspection a document required to be held or kept under this Act or a development condition of a development approval.

(2) The authorised person may keep a produced document to take an extract from, or make a copy of, the document.

(3) The authorised person must return the document to the person as soon as practicable after taking the extract or making the copy.

PART 4—EMERGENCY POWERS OF AUTHORISED PERSONS

Emergency powers

467.(1) This section applies if an authorised person is satisfied on reasonable grounds—

- (a) serious or material environmental harm has been, or is likely to be, caused; and
- (b) urgent action is necessary to—
 - (i) prevent or minimise the harm being caused; or
 - (ii) rehabilitate or restore the environment because of the harm.

(2) The authorised person may—

- (a) direct any person to take specified reasonable action within a specified reasonable time; or
- (b) take the action, or authorise another person to take the action.

(3) The direction may be given orally or by written notice.

(4) However, if the direction is given orally, the authorised person must, as soon as practicable, confirm the direction by written notice given to the person.

(5) If the authorised person decides to take the action, the authorised person may—

- (a) without a warrant, enter any place (other than premises, or the part of premises, used only for residential purposes) and take the action; and

- (b) in taking the action, exercise any of the powers under this chapter; and
- (c) if, in taking the action, the authorised person finds a thing that may provide evidence of the commission of an offence against this Act—sections 461(1) and 462 apply to the thing as if the thing were the evidence mentioned in the provisions and a warrant had been issued to the authorised person authorising the authorised person to seize it.

(6) The authorised person may exercise the powers mentioned in subsection (5) (“**emergency powers**”) at the time, with the help, and using the force, that is necessary and reasonable in the circumstances.

(7) If a person or thing is obstructing or preventing entry to, or action being taken at, any place by an authorised person while exercising or attempting to exercise emergency powers, a police officer may, if asked by the officer, using the force that is necessary and reasonable—

- (a) remove the person or thing from the place; and
- (b) take all reasonable measures to ensure the person or thing does not again obstruct or prevent the action being taken.

(8) In exercising or attempting to exercise emergency powers, an authorised person must take all reasonable steps to ensure the authorised person causes as little inconvenience, and does as little damage, as is practicable in the circumstances.

(9) This section does not limit any power an authorised person has apart from this section.

(10) If an authorised person authorises a person to take action under subsection (2)(b)—

- (a) the person may exercise the powers mentioned in subsection (5)(a); and
- (b) the authorised person must inform the person—
 - (i) of the action the person is authorised to take; and
 - (ii) of the person’s powers under this section; and

- (iii) in general terms, of the provisions of section 486;⁹⁶ and
- (c) subsections (6), (7) and (8) (so far as they relate to the power mentioned in subsection (5)(a)) apply to the person as if the person were the authorised person.

Authorised person may direct emergency release of contaminant

468.(1) An authorised person may give a written direction (an “**emergency direction**”) to a person to release a contaminant into the environment if the authorised person is satisfied—

- (a) it is necessary and reasonable to release the contaminant because of an emergency; and
- (b) there is no other practicable alternative to the release.

(2) The authorised person may impose reasonable conditions on the direction.

PART 5—OFFENCES

Failure of authorised person to return identity card

469. A person who ceases to be an authorised person must return the person’s identity card to the administering executive who issued it as soon as practicable after ceasing to be an authorised person, unless the person has a reasonable excuse for not returning it.

Maximum penalty—50 penalty units.

Failure to give information to administering authority

470.(1) This section applies if a person is given a notice under section 451.⁹⁷

⁹⁶ Section 486 (Authorised person to give notice of seizure or damage)

⁹⁷ Section 451 (Administering authority may require relevant information)

(2) The person must comply with the notice unless the person has a reasonable excuse for not complying with it.

Maximum penalty—50 penalty units.

(3) It is a reasonable excuse for the person to fail to comply with the notice if complying with it might tend to incriminate the person.

(4) The person does not commit an offence against this section if the information sought by the administering authority is not in fact relevant to the administration or enforcement of this Act.

Failure to comply with signal

471.(1) A person must obey a signal under section 459(2) to stop or not to move a vehicle, unless the person has a reasonable excuse for not obeying the signal.

Maximum penalty—50 penalty units.

(2) It is a reasonable excuse for the person to fail to stop or to move the vehicle if—

- (a) to obey immediately the signal would have endangered the person or another person; and
- (b) the person obeys the signal as soon as it is practicable to obey the signal.

Failure to comply with requirements about vehicles

472.(1) In this section—

“required action” for a vehicle, means—

- (a) to bring the vehicle to a place; and
- (b) to remain in control of the vehicle at a place for a reasonable time.

(2) A person who is required by an authorised person under section 459(3)(b) to give reasonable help to the authorised person to enable the entering or boarding of a vehicle must comply with the requirement, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—50 penalty units.

(3) A person who is required by an authorised person under section 460(1)(i) to take required action in relation to a vehicle must comply with the requirement, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—50 penalty units.

Failure to help authorised person—emergency

473.(1) This section applies if—

- (a) in an emergency, an authorised person is exercising or attempting to exercise emergency powers; and
- (b) for dealing with the emergency, the authorised person requires a person under section 460(1)(h) to give reasonable help to the authorised person in relation to the exercise of a power.

(2) The person must comply with the requirement, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—100 penalty units.

(3) If the help required is the answering of a question or producing of a document (other than a document required to be held or kept by the person under this Act or a development condition of a development approval), it is not a reasonable excuse for the person to fail to answer the question, or produce the document, on the ground that complying with the requirement might tend to incriminate the person.

(4) When making a requirement mentioned in subsection (3), the authorised person must inform the person of the following—

- (a) the person is obliged to answer the question or produce the document despite the rule of law relating to privilege against self-incrimination;
- (b) the person may answer the question or produce the document subject to the objection that complying with the requirement might tend to incriminate the person;
- (c) if the person makes an objection—the answer or the producing of the document may not be admitted in evidence against the person in a prosecution for an offence against this Act, other than an

offence (constituted by the giving of the answer or producing of the document) against either of the following sections—

- section 480 (False, misleading or incomplete documents)
- section 481 (False or misleading information).

(5) If, before giving the answer or producing the document, the person makes an objection, the answer or producing of the document is not admissible in evidence against the person in a prosecution for an offence against this Act, other than an offence (constituted by the giving of the answer or producing of the document) against either of the following sections—

- section 480 (False, misleading or incomplete documents)
- section 481 (False or misleading information).

Failure to help authorised person—other cases

474.(1) This section applies if—

- (a) an authorised person requires a person under section 460(1)(h) to give reasonable help to the authorised person in relation to the exercise of a power; but
- (b) section 473 does not apply.

(2) The person must comply with the requirement, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—50 penalty units.

(3) If the help required is the answering of a question or producing of a document (other than a document required to be held or kept by the person under this Act or a development condition of a development approval), it is a reasonable excuse for the person to fail to answer the question, or produce the document, if complying with the requirement might tend to incriminate the person.

Failure to give name and address etc.

475.(1) A person who is required by an authorised person under section 464(1) to state the person's name or address must comply with the

requirement, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—50 penalty units.

(2) A person who is required by an authorised person under section 464(3) to give evidence of the correctness of a name or address must give the evidence, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—50 penalty units.

(3) The person does not commit an offence against this section if—

- (a) the authorised person required the person to state the person's name and address on suspicion of the person having committed an offence against this Act; and
- (b) the person is not proved to have committed the offence.

Failure to answer questions

476.(1) This section applies if—

- (a) an authorised person requires a person under section 465 to answer a question; but
- (b) section 473 does not apply.

(2) The person must comply with the requirement, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—50 penalty units.

(3) It is a reasonable excuse for the person to fail to answer the question if complying with the requirement might tend to incriminate the person.

(4) The person does not commit an offence against this section if the information sought by the authorised person is not in fact relevant to the offence.

Failure to produce document

477. A person who is required under section 466 to produce a document must comply with the requirement, unless the person has a reasonable

excuse for not complying with it.

Maximum penalty—50 penalty units.

Failure to comply with authorised person's direction in emergency

478. A person to whom a notice is given under section 467(2)(a) must comply with the notice, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—100 penalty units.

Offences in relation to release of contaminant in emergency

479. A person to whom an emergency direction is given must—

- (a) comply with the direction (including a condition of the direction), unless the person has a reasonable excuse for not complying with it; and
- (b) take all reasonable and practicable precautions to prevent or minimise—
 - (i) environmental harm being caused; and
 - (ii) the risk of death or injury to humans and animals; and
 - (iii) loss or damage to property.

Maximum penalty—100 penalty units.

False, misleading or incomplete documents

480.(1) A person must not give to the administering authority or an authorised person a document containing information that the person knows is false, misleading or incomplete in a material particular.

Maximum penalty—165 penalty units.

(2) Subsection (1) does not apply to a person who, when giving the document—

- (a) informs the authorised person of the extent to which the document is false, misleading or incomplete; and

- (b) gives the correct information to the authorised person if the person has, or can reasonably obtain, the correct information.

(3) A complaint against a person for an offence against subsection (1) is sufficient if it states that the document was false, misleading or incomplete to the person's knowledge.

False or misleading information

481.(1) A person must not—

- (a) state anything to an authorised person that the person knows is false or misleading in a material particular; or
- (b) omit from a statement made to an authorised person anything without which the statement is, to the person's knowledge, misleading in a material particular.

Maximum penalty—165 penalty units.

(2) A complaint against a person for an offence against subsection (1)(a) or (b) is sufficient if it states that the statement made was false or misleading to the person's knowledge.

Obstruction of authorised persons

482.(1) In this section—

“**authorised person**” includes a person who is authorised by an authorised person to take action under section 467(2)(b).⁹⁸

(2) A person must not obstruct an authorised person in the exercise of a power under this chapter, unless the person has a reasonable excuse for obstructing the authorised person.

Maximum penalty—100 penalty units.

⁹⁸ Section 467 (Emergency powers)

Impersonation of authorised person

483. A person must not pretend to be an authorised person.

Maximum penalty—50 penalty units.

Attempts to commit offences

484.(1) A person who attempts to commit an offence against this Act commits an offence.

Maximum penalty—half the maximum penalty for committing the offence.

(2) The Criminal Code, section 4,⁹⁹ applies to subsection (1).

PART 6—GENERAL**Consent to entry**

485.(1) This section applies if an authorised person intends to seek the consent of an occupier of a place to an authorised person entering the place under this chapter.

(2) Before seeking the consent, the authorised person must inform the occupier—

- (a) of the purpose of the entry; and
- (b) that anything found and seized may be used in evidence in court; and
- (c) that the occupier is not required to consent.

(3) If the consent is given, the authorised person may ask the occupier to sign an acknowledgment of the consent.

(4) The acknowledgment must—

- (a) state the occupier was informed—

⁹⁹ The Criminal Code, section 4 (Attempts to commit offences)

- (i) of the purpose of the entry; and
 - (ii) that anything found and seized may be used in evidence in court; and
 - (iii) that the occupier was not required to consent; and
- (b) state the occupier gave the authorised person consent under this chapter to enter the place and exercise powers under this chapter.

(5) If the occupier signs an acknowledgment of consent, the authorised person must immediately give a copy to the occupier.

Authorised person to give notice of seizure or damage

486.(1) This section applies if—

- (a) an authorised person seizes or damages anything in the exercise of a power under this chapter; or
- (b) a person who is authorised by an authorised person under section 467(2)(b)¹⁰⁰ to take action damages anything in the exercise of a power under section 467.

(2) The authorised person must immediately give written notice of the particulars of the seizure or damage.

(3) The notice must be given to—

- (a) if anything is seized—the person from whom the thing was seized; or
- (b) if anything is damaged—the person who appears to the authorised person to be the owner of the thing.

(4) If, for any reason, it is not practicable to comply with subsection (2), the authorised person must—

- (a) leave the notice at the place where the seizure or damage happened; and
- (b) ensure it is left—

¹⁰⁰ Section 467 (Emergency powers)

- (i) in a reasonably secure way; and
- (ii) in a conspicuous position.

Compensation

487.(1) A person may claim compensation if the person incurs loss or expense because of the exercise or purported exercise of a power under this chapter, including, for example, in complying with a requirement made of the person under this chapter.

(2) The compensation must be claimed from—

- (a) if the power or requirement that gives rise to the claim was exercised or made by an authorised person appointed by the chief executive officer of a local government, or a person authorised by such an authorised person under section 467(2)(b)¹⁰¹ to take action—the local government; or
- (b) if paragraph (a) does not apply—the State.

(3) Payment of compensation may be claimed and ordered in a proceeding for—

- (a) compensation brought in a court of competent jurisdiction; or
- (b) an offence against this Act brought against the person making the claim for compensation.

(4) A court may order the payment of compensation for the loss or expense only if it is satisfied it is just to make the order in the circumstances of the particular case.

Administering authority to reimburse costs and expenses incurred

488.(1) If a person incurs costs and expenses in complying with a direction under section 467(2)(a), the administering authority must reimburse the person's reasonable costs and expenses.

(2) Subsection (1) does not apply to the person who caused or allowed the relevant situation mentioned in section 467(1) to happen.

¹⁰¹ Section 467 (Emergency powers)

Costs of investigation or remediation to be paid by recipient

489.(1) The amount properly and reasonably incurred by the administering authority in conducting a site investigation, or remediating land, is a debt payable to the administering authority by the recipient of the notice to conduct or commission the investigation or remediate the land.

(2) If more than 1 person failed to perform the work, the amount incurred is payable by the persons jointly and severally.

(3) However, subsection (1) does not apply if the requirement for the recipient to conduct or commission the investigation, or carry out the remediation has been waived by the administering authority.

CHAPTER 10—LEGAL PROCEEDINGS**PART 1—EVIDENCE****Evidentiary provisions**

490.(1) This section applies to a proceeding under or in relation to this Act.

(2) Unless a party, by reasonable notice, requires proof of—

- (a) the appointment of an authorised person under this Act; or
- (b) the authority of an authorised person to do an act under this Act;

the appointment or authority must be presumed.

(3) A signature purporting to be the signature of the administering executive or an authorised person is evidence of the signature it purports to be.

(4) A certificate purporting to be signed by the Minister stating that a stated person is or was the administering authority or administering executive at a time, or during a stated period, is evidence of the matter stated in the certificate.

(5) A certificate purporting to be signed by the administering executive

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stating any of the following matters is evidence of the matter—

- (a) a stated document is a copy of a notice, direction, decision, order, report, environmental requirement or other authority or permit issued or given under this Act;
- (b) on a stated day, or during a stated period, a stated person was or was not the holder of an environmental requirement, permit or other authority issued or given under this Act;
- (c) an environmental requirement or other authority or permit issued or given under this Act—
 - (i) was or was not issued or given for a stated term; or
 - (ii) was or was not in force on a stated day or during a stated period; or
 - (iii) was or was not subject to a stated condition;
- (d) on a stated day, an environmental authority was suspended for a stated period or cancelled;
- (e) on a stated day, a stated person was given a stated notice, direction, or order under this Act;
- (f) a stated document is a copy of a part of, or an extract from, a register kept under this Act;
- (g) a stated amount is payable under this Act by a stated person and has not been paid;
- (h) that a stated substance is a contaminant or an ozone depleting substance;
- (i) that a stated method of storage, preservation, handling or transportation of a sample taken under this Act has not materially affected the attributes of the sample;
- (j) another matter prescribed by regulation.

(6) In a complaint starting a proceeding, a statement that the matter of the complaint came to the complainant's knowledge on a stated day is evidence of the matter.

(7) The production by the prosecutor of a certificate purporting to be signed by an appropriately qualified person (the “**analyst**”) and stating—

- (a) the analyst received from a stated person the sample mentioned in the certificate; and
- (b) the analyst analysed the sample on a stated day and at a stated place; and
- (c) the results of the analysis;

is evidence of the matter stated in the certificate.

(8) Any instrument, equipment or installation prescribed by regulation that is used by an authorised person or analyst in accordance with the conditions (if any) prescribed by the regulation is taken to be accurate and precise in the absence of evidence to the contrary.

(9) In a proceeding in which the administering authority applies to recover the costs and expenses incurred by it, a certificate by the administering executive stating that stated costs and expenses were incurred and the way and purpose for which they were incurred is evidence of the matters stated.

Special evidentiary provision—environmental nuisance

491.(1) This section applies to a proceeding for an offence against section 440 in which it is claimed the defendant caused environmental nuisance by the emission of noise, smoke, dust, fumes, light or odour.

(2) An authorised person may give evidence (without any need to call further opinion evidence) that the authorised person formed the opinion based on the authorised person's own senses that—

- (a) noise, smoke, dust, fumes, light or odour was emitted from a place occupied by the defendant and travelled to a place occupied by someone else; and
- (b) the level, nature or extent of the noise, smoke, dust, fumes, light or odour within the place occupied by the other person was an unreasonable interference with the person's enjoyment of the place.

Responsibility for acts or omissions of representatives

492.(1) If, in a proceeding for an offence against this Act, it is relevant to

prove a person's state of mind about a particular act or omission, it is enough to show—

- (a) the act or omission was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and
- (b) the representative had the state of mind.

(2) An act or omission done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken, in a proceeding for an offence against this Act, to have been done or omitted to be done also by the person, unless the person proves the person took all reasonable steps to prevent the acts or omissions.

(3) If—

- (a) an individual is convicted of an offence against this Act; and
- (b) the individual would not have been convicted of the offence if subsections (1) and (2) had not been enacted;

the individual is not liable to be punished by imprisonment for the offence.

PART 2—EXECUTIVE OFFICER LIABILITY

Executive officers must ensure corporation complies with Act

493.(1) The executive officers of a corporation must ensure that the corporation complies with this Act.

(2) If a corporation commits an offence against a provision of this Act, each of the executive officers of the corporation also commits an offence, namely, the offence of failing to ensure the corporation complies with this Act.

Maximum penalty—the penalty for the contravention of the provision by an individual.

(3) Evidence that the corporation committed an offence against this Act is evidence that each of the executive officers committed the offence of failing

to ensure that the corporation complies with this Act.

(4) However, it is a defence for an executive officer to prove—

- (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence—the officer took all reasonable steps to ensure the corporation complied with the provision; or
- (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.

PART 3—LEGAL PROCEEDINGS

Indictable and summary offences

494.(1) An offence against this Act for which the maximum penalty of imprisonment is 2 years or more is an indictable offence.

(2) Any other offence against this Act is a summary offence.

Proceedings for indictable offences

495.(1) A proceeding for an indictable offence against this Act may be taken, at the election of the prosecution—

- (a) by way of summary proceedings under the *Justices Act 1886*; or
- (b) on indictment.

(2) A magistrate must not hear an indictable offence summarily if—

- (a) the defendant asks at the start of the hearing that the charge be prosecuted on indictment; or
- (b) the magistrate considers that the charge should be prosecuted on indictment.

(3) If subsection (2) applies—

- (a) the magistrate must proceed by way of an examination of witnesses for an indictable offence; and

- (b) a plea of the person charged at the start of the proceeding must be disregarded; and
- (c) evidence brought in the proceeding before the magistrate decided to act under subsection (2) is taken to be evidence in the proceeding for the committal of the person for trial or sentence; and
- (d) before committing the person for trial or sentence, the magistrate must make a statement to the person as required by the *Justices Act 1886*, section 104(2)(b).¹⁰²

(4) The maximum penalty that may be summarily imposed for an indictable offence is 165 penalty units or 1 year's imprisonment.

Limitation on who may summarily hear indictable offence proceedings

496.(1) A proceeding must be before a magistrate if it is a proceeding—

- (a) for the summary conviction of a person on a charge for an indictable offence; or
- (b) for an examination of witnesses for a charge for an indictable offence.

(2) However, if a proceeding for an indictable offence is brought before a justice who is not a magistrate, jurisdiction is limited to taking or making a procedural action or order within the meaning of the *Justices of the Peace and Commissioners for Declarations Act 1991*.

Limitation on time for starting summary proceedings

497. A proceeding for an offence against this Act by way of summary proceeding under the *Justices Act 1886* must start—

- (a) within 1 year after the commission of the offence; or
- (b) within 1 year after the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.

¹⁰² *Justices Act 1886*, section 104 (Proceedings upon an examination of witnesses in relation to an indictable offence)

Notice of defence

498. If a person intends to rely on a defence under chapter 8,¹⁰³ the person must give written notice of the intention to the prosecutor—

- (a) for a charge being prosecuted by way of summary proceeding under the *Justices Act 1886*—at least 14 days before the charge is heard; or
- (b) for a charge being prosecuted on indictment—at least 7 days before the charge is set down for hearing.

Proof of authority

499. If a provision for an offence against this Act refers to a person unlawfully doing an act or making an omission, the *Justices Act 1886*, section 76,¹⁰⁴ applies as if the doing of the act or the making of the omission with an environmental authority were an exemption contained in the provision.

Fines payable to local government

500.(1) This section applies if—

- (a) the administration and enforcement of a matter has been devolved to a local government; and
- (b) a proceeding for an offence about the matter is taken; and
- (c) a court imposes a fine for the offence.

(2) The fine must be paid to the local government.

(3) If a person other than the local government prosecutes the offence, subsection (2) does not apply to any part of the fine the court orders be paid to the party.

¹⁰³ Chapter 8 (General environmental offences)

¹⁰⁴ *Justices Act 1886*, section 76 (Proof of negative etc.)

Recovery of costs of rehabilitation or restoration etc.

501.(1) This section applies if, in a proceeding for an offence against this Act—

- (a) the court finds the defendant has caused environmental harm by a contravention of this Act that constitutes an offence; and
- (b) the court finds the administering authority has reasonably incurred costs and expenses—
 - (i) in taking action to prevent or minimise the harm or to rehabilitate or restore the environment because of the contravention; or
 - (ii) reimbursing costs and expenses under section 488; and
- (c) the administering authority applies to the court for an order against the defendant for the payment of the costs and expenses.

(2) The court must order the defendant to pay the administering authority's reasonable costs and expenses to the authority unless it is satisfied it would not be just to make the order in the circumstances of the particular case.

(3) This section does not limit the court's powers under the *Penalties and Sentences Act 1992* or any other law.

Court may order payment of compensation etc.

502.(1) This section applies if, in a proceeding for an offence against this Act, the court finds the defendant has caused environmental harm by a contravention of this Act that constitutes an offence.

(2) The court may order the defendant to do either or both of the following—

- (a) pay to persons who, because of the contravention, have suffered loss of income, loss or damage to property or incurred costs or expenses in preventing or minimising, or attempting to prevent or minimise, loss or damage, an amount of compensation it considers appropriate for the loss or damage suffered or the costs and expenses incurred;
- (b) take stated action to rehabilitate or restore the environment

because of the contravention.

(3) An order under subsection (2) is in addition to the imposition of a penalty and any other order under this Act.

(4) This section does not limit the court's powers under the *Penalties and Sentences Act 1992* or any other law.

Recovery of costs of investigation

503.(1) This section applies if—

- (a) a person is convicted of an offence against this Act; and
- (b) the court finds the administering authority has reasonably incurred costs and expenses in taking any sample or conducting any inspection, test, measurement or analysis during the investigation of the offence; and
- (c) the administering authority applies for an order against the person for the payment of the costs and expenses.

(2) The court may order the person to pay to the administering authority the reasonable costs and expenses incurred by the authority if it is satisfied it would be just to make the order in the circumstances of the particular case.

(3) This section does not limit the court's powers under the *Penalties and Sentences Act 1992* or any other law.

PART 4—RESTRAINT ORDERS

Application of pt 4

504. This part does not apply to a development offence.¹⁰⁵

¹⁰⁵ For development offences, see part 5 (Enforcement orders).

Restraint of contraventions of Act etc.

505.(1) A proceeding may be brought in the Court for an order to remedy or restrain an offence against this Act, or a threatened or anticipated offence against this Act, by—

- (a) the Minister; or
- (b) the administering authority; or
- (c) someone whose interests are affected by the subject matter of the proceeding; or
- (d) someone else with the leave of the Court (even though the person does not have a proprietary, material, financial or special interest in the subject matter of the proceeding).

(2) In deciding whether or not to grant leave to a person under subsection (1)(d), the Court—

- (a) must be satisfied—
 - (i) environmental harm has been or is likely to be caused; and
 - (ii) the proceeding would not be an abuse of the process of the Court; and
 - (iii) there is a real or significant likelihood that the requirements for the making of an order under this section would be satisfied; and
 - (iv) it is in the public interest that the proceeding should be brought; and
 - (v) the person has given written notice to the Minister or, if the administering authority is a local government, the administering executive, asking the Minister or authority to bring a proceeding under this section and the Minister or executive has failed to act within a time that is a reasonable time in the circumstances; and
 - (vi) the person is able to adequately represent the public interest in the conduct of the proceeding; and
- (b) may have regard to other matters the Court considers relevant to the person's standing to bring and maintain the proceeding.

(3) However, the Court must not refuse to grant leave merely because the person's interest in the subject matter of the proceeding is no different from someone else's interest in the subject matter.

(4) The Court may grant leave subject to conditions, including, for example—

- (a) a condition requiring the person to give security for the payment of costs of the proceeding that may be awarded against the person; or
- (b) a condition requiring the person to give an undertaking about damages.

(5) If the Court is satisfied—

- (a) an offence against this Act has been committed (whether or not it has been prosecuted); or
- (b) an offence against this Act will be committed unless restrained;

the Court may make the orders it considers appropriate to remedy or restrain the offence.

(6) An order—

- (a) may direct the defendant—
 - (i) to stop an activity that is or will be a contravention of this Act; or
 - (ii) to do anything required to comply with, or to cease a contravention of, this Act; and
- (b) may be in the terms the Court considers appropriate to secure compliance with this Act; and
- (c) must specify the time by which the order is to be complied with.

(7) The Court's power to make an order to stop an activity may be exercised whether or not—

- (a) it appears to the Court the person against whom the order is made intends to engage, or to continue to engage, in the activity; or
- (b) the person has previously engaged in an activity of that kind; or
- (c) there is danger of substantial damage to the environment if the person engages, or continues to engage, in the activity.

(8) The Court's power to make an order to do anything may be exercised whether or not—

- (a) it appears to the Court the person against whom the order is made intends to fail, or to continue to fail, to do the thing; or
- (b) the person has previously failed to do a thing of that kind; or
- (c) there is danger of substantial damage to the environment if the person fails, or continues to fail, to do the thing.

(9) Without limiting the powers of the Court, the Court may make an order—

- (a) restraining the use of plant or equipment or a place; or
- (b) requiring the demolition or removal of plant or equipment, a structure or another thing; or
- (c) requiring the rehabilitation or restoration of the environment.

(10) The Court must order a plaintiff to pay costs if the Court is satisfied the proceeding was brought for obstruction or delay.

(11) The Court's power under this section is in addition to its other powers.

(12) A person who contravenes an order commits an offence against this Act.

Maximum penalty for subsection (12)—3 000 penalty units or 2 years imprisonment.

Power of Court to make order pending determination of proceeding

506.(1) This section applies if a proceeding has been brought by a person in the Court under section 505 and the Court has not determined the proceeding.

(2) On the person's application, the Court may make an order of a kind mentioned in section 505 pending determination of the proceeding if it is satisfied it would be proper to make the order.

(3) The Court's power to make an order to stop an activity may be exercised whether or not—

- (a) it appears to the Court the person against whom the order is made

intends to engage, or to continue to engage, in the activity; or

- (b) the person has previously engaged in an activity of that kind; or
- (c) there is an imminent danger of substantial damage to the environment if the person engages, or continues to engage, in the activity.

(4) The Court's power to make an order to do anything may be exercised whether or not—

- (a) it appears to the Court the person against whom the order is made intends to fail, or to continue to fail, to do the thing; or
- (b) the person has previously failed to do a thing of that kind; or
- (c) there is an imminent danger of substantial damage to the environment if the person fails, or continues to fail, to do the thing.

(5) The Court's power under this section is in addition to its other powers.

(6) A person who contravenes an order commits an offence against this Act.

Maximum penalty for subsection (6)—3 000 penalty units or 2 years imprisonment.

PART 5—ENFORCEMENT ORDERS

Proceeding for orders

507.(1) A person may bring a proceeding in the Court—

- (a) for an order to remedy or restrain the commission of a development offence (an **“enforcement order”**); or
- (b) if the person has brought a proceeding under paragraph (a) and the Court has not decided the proceeding—for an order under section 509 (an **“interim enforcement order”**); or
- (c) to cancel or change an enforcement order or interim enforcement

order.

(2) The person may bring a proceeding under subsection (1)(a) whether or not any right of the person has been, or may be, infringed by, or because of, the commission of the offence.

Proceeding brought in a representative capacity

508.(1) The proceeding may be brought by the person on their own behalf or in a representative capacity.

(2) However, if the proceeding is brought in a representative capacity, 1 of the following consents must be obtained—

- (a) if the proceeding is brought on behalf of a body of persons or a corporation—the members of the governing body;
- (b) if the proceeding is brought on behalf of an individual—the individual.

Making interim enforcement order

509.(1) The Court may make an interim enforcement order pending a decision of the proceeding if the Court is satisfied it would be appropriate to make the order.

(2) The Court may make the order subject to conditions, including a condition requiring the applicant for the order to give an undertaking to pay costs resulting from damage suffered by the respondent if the proceeding is unsuccessful.

Making enforcement order

510.(1) The Court may make an enforcement order if the Court is satisfied the offence—

- (a) has been committed; or
- (b) will be committed unless restrained.

(2) If the Court is satisfied the offence has been committed, the Court may make an enforcement order whether or not there has been a prosecution for the offence.

Effect of orders

511.(1) An enforcement order or an interim enforcement order may direct the respondent—

- (a) to stop an activity that constitutes, or will constitute, a development offence; or
- (b) not to start an activity that will constitute a development offence; or
- (c) to do anything required to stop committing a development offence.

(2) Without limiting the Court's powers, the Court may make an order—

- (a) restraining the use of plant or equipment or a place; or
- (b) requiring the repairing, demolition or removal of plant or equipment, a structure or other thing; or
- (c) requiring the rehabilitation or restoration of the environment.

(3) An enforcement order or interim enforcement order—

- (a) may be in terms the Court considers appropriate to secure compliance with this Act; and
- (b) must state the time by which the order is to be complied with.

(4) A person who contravenes an enforcement order or interim enforcement commits an offence against this Act.

Maximum penalty for subsection (4)—3 000 penalty units or 2 years imprisonment.

Court's powers about orders

512.(1) The Court's power to make an enforcement order or interim enforcement order to stop, or not to start, an activity may be exercised whether or not—

- (a) it appears to the Court the person against whom the order is made intends to engage, or to continue to engage, in the activity; or
- (b) the person has previously engaged in an activity of the kind; or
- (c) there is danger of substantial damage to the environment if the

person engages, or continues to engage, in the activity.

(2) The Court's power to make an enforcement order or interim enforcement order to do anything may be exercised whether or not—

- (a) it appears to the Court the person against whom the order is made intends to fail, or to continue to fail, to do the thing; or
- (b) the person has previously failed to do a thing of the kind; or
- (c) there is danger of substantial damage to the environment if the person fails, or continues to fail, to do the thing.

(3) The Court may cancel or change an enforcement order or interim enforcement order.

(4) The Court's power under this section is in addition to its other powers.

Costs involved in bringing proceeding

513. If the proceeding is brought in a representative capacity, the person on whose behalf the proceeding is brought may contribute to, or pay, the legal costs and expenses incurred by the person bringing the proceeding.

CHAPTER 11—ADMINISTRATION

PART 1—DEVOLUTIONS

Devolution of powers

514.(1) The Governor in Council may, by regulation, devolve to a local government the administration and enforcement of—

- (a) the whole or part of an environmental protection policy; or
- (b) the issue of environmental authorities; or
- (c) another matter under this Act (other than chapter 2 or chapter 7, part 8).

(2) The administration and enforcement of this Act for an environmentally relevant activity carried out in an area below the high or low-watermark forming the boundary of a local government's area may be devolved to the local government.

(3) On the commencement of the regulation—

- (a) the local government becomes the administering authority for the devolved matter; and
- (b) the local government's chief executive officer becomes the administering executive for the devolved matter; and
- (c) the administration and enforcement of the devolved matter is a function of local government to be performed by the local government for its area.

(4) If the devolved matter relates to an environmentally relevant activity mentioned in subsection (2), the local government's area is, for subsection (3)(c), taken to include the area in which the activity is carried out.

(5) To remove any doubt, the local government may—

- (a) make a resolution or local law (not inconsistent with this Act) about the fees payable to it for the devolved matter; and
- (b) make a local law (not inconsistent with this Act) about any matter for which it is necessary or convenient to make provision for carrying out or giving effect to the devolved matter.

(6) Despite subsection (5)(a), a local government may make a resolution or local law prescribing a lower, but not a higher, fee for something for which a fee is prescribed under a regulation.

(7) If the chief executive is satisfied the local government has failed to do anything in the administration or enforcement of the devolved matter—

- (a) the chief executive may do the thing; and
- (b) the reasonable costs and expenses incurred by the chief executive are a debt payable by the local government to the State.

PART 2—DELEGATIONS

Delegation by Minister

515. The Minister may delegate the Minister's powers under this Act to an appropriately qualified public service officer.

Delegation by chief executive

516.(1) The chief executive may delegate the executive's powers under this Act to—

- (a) an appropriately qualified—
 - (i) authorised person; or
 - (ii) public service officer; or
- (b) a local government.

(2) A delegation of a power to a local government may permit the subdelegation of the power to an appropriately qualified employee of the local government.

Delegation by other administering executives

517.(1) A local government's chief executive officer may delegate the officer's powers under this Act to an appropriately qualified employee of the local government.

(2) A delegation of a power to an employee of a local government may permit the subdelegation of the power to another appropriately qualified employee of the local government.

Delegation by administering authority

518.(1) An administering authority may—

- (a) if the authority is a local government—by resolution, delegate the authority's powers under this Act to—
 - (i) the mayor; or

- (ii) a standing committee or a chairperson of a standing committee; or
- (iii) the chief executive officer; or
- (b) if the authority is the chief executive—delegate the authority’s powers under this Act to—
 - (i) an authorised person or public service officer; or
 - (ii) a local government.

(2) A delegation of a power by the chief executive to a local government may permit the subdelegation of the power to another appropriately qualified employee of the local government.

PART 3—REVIEW OF DECISIONS AND APPEALS

Division 1—Interpretation

Original decisions

519.(1) A decision mentioned in schedule 1 is an “**original decision**”.

(2) A decision under an environmental protection policy or regulation that the policy or regulation declares to be a decision to which this part applies is also an “**original decision**”.

Dissatisfied person

520.(1) A “**dissatisfied person**”, for an original or review decision, is—

- (a) if the decision is about an EIS or the EIS process for an EIS—the relevant proponent under chapter 3, part 1, for the project to which the EIS relates; or
- (b) if the decision is about an environmental authority—
 - (i) the applicant for the authority; or
 - (ii) the holder of the environmental authority; or

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- (c) if the decision is about a transfer application under chapter 5, part 9—the applicant; or
- (d) if the decision is to give an audit notice, conduct an environmental audit or prepare an environmental audit report under chapter 5, part 11—the relevant environmental authority holder; or
- (e) if the decision is about an environmental evaluation or protection order—the recipient; or
- (f) if the decision is about an environmental management program—the holder of an approval for the program or person or public authority that is required to or submits the program; or
- (g) if the decision is a decision of an authorised person under section 467(2)(a) to direct a person to take action—the person directed to take the action; or
- (h) if the decision is about an approval under section 369—the applicant for, or holder of, the approval; or
- (i) if the decision is about recording particulars of land in, or removing particulars of land from, the environmental management register or contaminated land register—the land's owner; or
- (j) if the decision is about a site investigation of land—
 - (i) the recipient for the notice to conduct or commission the site investigation; and
 - (ii) the land's owner, other than for a decision under section 378 or 385; and
 - (iii) if another person conducts or commissions the site investigation—the other person; or
- (k) if the decision is about the remediation of contaminated land—
 - (i) the recipient for the remediation notice; and
 - (ii) the land's owner, other than for a decision under section 392; and
 - (iii) if another person conducts or commissions work to remediate the land—the other person; or

- (l) if the decision is about a site management plan for contaminated land—
 - (i) the recipient for the notice to prepare or commission the site management plan, other than for a decision under section 413; and
 - (ii) the land’s owner, other than for a decision under section 407; and
 - (iii) if another person prepares or commissions the plan—the other person, other than for a decision under section 413; or
 - (m) if the decision is about the remediation of contaminated land—the land’s owner and, if another person conducts or commissions work to remediate the land, the other person; or
 - (n) if the decision is about erecting signs on contaminated land—the land’s owner; or
 - (o) if the decision is about a disposal permit—the applicant for the permit; or
 - (p) if the decision is a decision under an environmental protection policy or a regulation that the policy or regulation declares to be a decision to which this part applies—the person declared under the policy or regulation to be a dissatisfied person for the decision; or
 - (q) if the decision is about an application for a disclosure exemption—the applicant for the exemption.
- (2) A submitter for an application is also a **“dissatisfied person”** if the

decision is about the submission of an environmental management program to which section 335 applies.¹⁰⁶

Division 2—Internal review of decisions

Procedure for review

521.(1) A dissatisfied person may apply for a review of an original decision.

(2) The application must—

- (a) be made in the approved form to the administering authority within—
 - (i) 14 days after the day on which the person receives notice of the original decision or the administering authority is taken to have made the decision (the “**review date**”); or
 - (ii) the longer period the authority in special circumstances allows; and
- (b) be supported by enough information to enable the authority to decide the application.

(3) On or before making the application, the applicant must send the following documents to the other persons who were given notice of the original decision—

- (a) notice of the application (the “**review notice**”);
- (b) a copy of the application and supporting documents.

¹⁰⁶ Sections 335 (Public notice of submission for approval of certain draft programs), 378 (Waiver of requirement to conduct or commission site investigation), 385 (Administering authority may require another report or additional information), 392 (Waiver of requirement to remediate land), 413 (Approval of draft site management plan), 407 (Waver of requirement to prepare or commission site management plan), 467 (Emergency Powers)
Chapter 3, part 1 (EIS process)
Chapter 5, parts 9 (Transfer of authorities) and 11 (Environmental audits for mining activities)
Chapter 4, part 3, division 2, subdivision 1 (General provisions for obtaining licence)
Chapter 4, part 5 (Amending environmental authorities by application)

(4) The review notice must inform the recipient that submissions on the application may be made to the administering authority within 7 days after the application is made to the authority.

(5) If the administering authority is satisfied the applicant has complied with subsections (2) and (3), the authority must, within 14 days after receiving the application—

- (a) review the original decision; and
- (b) consider any submissions properly made by a recipient of the review notice; and
- (c) make a decision (the “**review decision**”) to—
 - (i) confirm or revoke the original decision; or
 - (ii) vary the original decision in a way the administering authority considers appropriate.

(6) The application does not stay the original decision.

(7) The application must not be dealt with by—

- (a) the person who made the original decision; or
- (b) a person in a less senior office than the person who made the original decision.

(8) Within 14 days after making the review decision, the administering authority must give written notice of the decision to the applicant and persons who were given notice of the original decision.

(9) The notice must—

- (a) include the reasons for the review decision; and
- (b) inform the persons of their right of appeal against the decision.

(10) If the administering authority does not comply with subsection (5) or (8), the authority is taken to have made a decision confirming the original decision.

(11) Subsection (7) applies despite the *Acts Interpretation Act 1954*, section 27A.¹⁰⁷

¹⁰⁷ *Acts Interpretation Act 1954*, section 27A (Delegation of powers)

- (12)** This section does not apply to an original decision made by—
- (a) for a matter, the administration and enforcement of which has been devolved to a local government—the local government itself or the chief executive officer of the local government personally; or
 - (b) for another matter—the chief executive personally.

Stay of operation of original decisions

522.(1) If an application is made for review of an original decision, the applicant may immediately apply for a stay of the decision to—

- (a) for an original decision mentioned in schedule 1, part 1—the tribunal; or
- (b) for an original decision mentioned in schedule 1, part 2—the Court.

(2) The tribunal or the Court may stay the decision to secure the effectiveness of the review and any later appeal to the tribunal or the Court.

(3) A stay may be given on conditions the tribunal or the Court considers appropriate and has effect for the period stated by the tribunal or the Court.

(4) The period of a stay must not extend past the time when the administering authority reviews the decision and any later period the tribunal or the Court allows the applicant to enable the applicant to appeal against the review decision.

Division 3—Appeals

Subdivision 1—Appeals to tribunal

Review decisions subject to tribunal appeal

523. This subdivision applies if the administering authority makes an original decision mentioned in schedule 1, part 1.

Right of appeal

524. A dissatisfied person who is dissatisfied with the decision may appeal against the decision to the tribunal.

Appeal period

525.(1) The appeal must be started within 30 days after the appellant receives notice of the decision.¹⁰⁸

(2) However, the tribunal may at any time extend the time for starting the appeal.

Tribunal mediation

526.(1) Any party to the appeal may, at any time before the appeal is decided, ask the tribunal to conduct or provide mediation for the appeal.

(2) The mediation must be conducted by the tribunal or a mediator chosen by the tribunal.¹⁰⁹

Nature of appeal

527. The appeal is by way of rehearing, unaffected by the review decision.

Tribunal's powers for appeal

528. In deciding the appeal, the tribunal has the same powers as the administering authority.

Decision for appeals against refusals under s 207

529.(1) This section applies if the decision appealed against is a decision under section 207 to refuse to allow a non-standard application for

¹⁰⁸ For how to start the appeal, see the *Land and Resources Tribunal Rules 2000*, section 3 (Starting proceeding before tribunal).

¹⁰⁹ For the conduct of the mediation, see the *Land and Resources Tribunal Act 1999*, sections 72 to 75.

environmental authority (mining lease) to proceed.¹¹⁰

(2) In deciding the appeal the tribunal must confirm the decision or allow the appeal.

(3) If the appeal is allowed—

- (a) the relevant period for the administering authority to make the decision is taken to have been extended to when the decision on the appeal is made; and
- (b) the authority is taken, at the end of the period, not to have made the decision.

Decision for other appeals

530.(1) This section applies if the decision appealed against is not a decision mentioned in section 529(1).

(2) In deciding the appeal, the tribunal may—

- (a) confirm the decision; or
- (b) set aside the decision and substitute another decision; or
- (c) set aside the decision and return the matter to the administering authority with directions the tribunal considers appropriate.

(3) In setting aside or substituting the decision, the tribunal has the same powers as the authority.

(4) However, this part does not apply to a power exercised under subsection (3).

(5) If the tribunal substitutes another decision, the substituted decision is taken for this Act, other than section 569¹¹¹ and this subdivision, to be the authority's decision.

¹¹⁰ Section 207 (Administering authority may refuse application)

¹¹¹ Section 569 (Notice of refusal or decision to limit exemption)

Subdivision 2—Appeals to Court**Who may appeal**

531.(1) A dissatisfied person who is dissatisfied with a review decision, other than a review decision to which subdivision 1 applies, may appeal against the decision to the Court.

(2) The chief executive may appeal against another administering authority's decision (whether an original or review decision) to the Court.

(3) A dissatisfied person who is dissatisfied with an original decision to which section 521 does not apply may appeal against the decision to the Court.

How to start appeal

532.(1) An appeal is started by—

- (a) filing written notice of appeal with the registrar of the Court; and
- (b) complying with rules of court applicable to the appeal.

(2) The notice of appeal must be filed—

- (a) if the appellant is the chief executive—within 45 days after the decision is made or taken to have been made; or
- (b) if the appellant is not the chief executive—within 30 days after the day the appellant receives notice of the decision or the decision is taken to have been made.

(3) The Court may at any time extend the period for filing the notice of appeal.

(4) The notice of appeal must state fully the grounds of the appeal and the facts relied on.

Appellant to give notice of appeal to other parties

533.(1) Within 10 days after filing the notice of appeal, the appellant must serve notice of the appeal on—

- (a) if the appellant is the chief executive—all persons who were given

notice of the original decision; or

- (b) if the appellant is not the chief executive—the other persons who were given notice of the original decision.

(2) The notice must inform the persons that, within 14 days after service of the notice of appeal, they may elect to become a respondent to the appeal by filing in the Court a notice of election under rules of court.

Persons may elect to become respondents to appeal

534. A person who properly files in the Court a notice of election becomes a respondent to the appeal.

Stay of operation of decisions

535.(1) The Court may grant a stay of a decision appealed against to secure the effectiveness of the appeal.

(2) A stay may be granted on conditions the Court considers appropriate and has effect for the period stated by the Court.

(3) The period of a stay must not extend past the time when the Court decides the appeal.

(4) An appeal against a decision does not affect the operation or carrying out of the decision unless the decision is stayed.

Hearing procedures

536.(1) The procedure for an appeal is to be in accordance with the rules of court applicable to the appeal or, if the rules make no provision or insufficient provision, in accordance with directions of the judge.

(2) An appeal is by way of rehearing, unaffected by the administering authority's decision.

Assessors

537. If the judge hearing an appeal is satisfied the appeal involves a question of special knowledge and skill, the judge may appoint 1 or more assessors to help the judge in deciding the appeal.

Appeals may be heard with planning appeals

538.(1) This section applies if—

- (a) a person appeals against an administering authority's decision (whether an original or review decision) to refuse to grant an environmental authority or to impose conditions on an environmental authority; and
- (b) a person appeals against the assessment manager's decision under the Integrated Planning Act about a planning or development matter for the premises the subject of the environmental authority application or environmental authority.

(2) On the application of a party to either of the appeals, the Court may order—

- (a) the appeals to be heard together or 1 immediately after the other; or
- (b) 1 appeal to be stayed until the other has been decided.

(3) The application may be made—

- (a) by an appellant when starting an appeal or at any time before the appeals are decided; or
- (b) by another party at any time before the appeals are decided.

(4) This section applies even though the parties, or all of the parties, to the appeals are not the same.

Powers of Court on appeal

539.(1) In deciding an appeal, the Court may—

- (a) confirm the decision appealed against; or
- (b) vary the decision appealed against; or
- (c) set aside the decision appealed against and make a decision in substitution for the decision set aside.

(2) If on appeal the Court acts under subsection (1)(b) or (c), the decision is taken, for this Act (other than this part), to be that of the administering authority.

PART 4—GENERAL

Required registers

540.(1) The administering authority must, for its administration under this Act, keep a register of the following—

- (a) in relation to chapter 3, the following—
 - (i) submitted draft terms of reference for EISs;
 - (ii) TOR notices given to the chief executive;
 - (iii) written summaries of comments given to the chief executive about draft terms of reference for EISs;
 - (iv) final terms of reference published by the chief executive;
 - (v) submitted EISs;
 - (vi) declarations of compliance under section 53 given to the chief executive;
 - (vii) EIS assessment reports;
 - (viii) bilateral agreements;
- (b) development approvals for environmentally relevant activities;
- (c) environmental authorities;
- (d) in relation to chapter 5, the following—
 - (i) assessment level decisions;
 - (ii) submitted environmental management documents;
 - (iii) EM plan assessment reports and EMOS assessment reports;
 - (iv) draft environmental authorities (mining activities);
 - (v) declarations of compliance under section 214 given to the chief executive;
 - (vi) submitted plans of operations;
 - (vii) submitted final rehabilitation reports;
 - (viii) FRR assessment reports;
 - (ix) transfers of environmental authorities (mining activities);

- (x) surrenders of environmental authorities (mining activities);
- (xi) standard environmental conditions;
- (e) in relation to chapter 7, part 8—
 - (i) an environmental management register; and
 - (ii) a contaminated land register;
- (f) environmental reports;
- (g) monitoring programs carried out under this Act or a development condition of a development approval;
- (h) the results of monitoring programs mentioned in paragraph (g);
- (i) environmental management programs;
- (j) environmental protection orders;
- (k) authorised persons;
- (l) approved codes of practice;
- (m) codes of environmental compliance;
- (n) standard environmental conditions;
- (o) other documents or information prescribed under regulation.

(2) A reference to a document in subsection (1) includes a reference to any amendment of the document made under this Act.¹¹²

Keeping of registers

541.(1) The register for codes of environmental compliance must include a copy of each of the codes.

(2) The register for standard environmental conditions must include a copy of each of the conditions and the gazette notice by which each of the conditions was approved.

(3) If the administering authority considers it impracticable to include a

¹¹² Chapters 3 (Environmental impact statements) and 5 (Environmental authorities for mining activities)
Sections 53 (Declaration of compliance), 214 (Declaration of compliance)
Chapter 7, part 8 (Contaminated land)

document in any other register, it may include details of the document in the register instead of the document.

(4) However, if the other register only includes details of a document—

- (a) the authority must keep the document open for public inspection in the way required of a register under section 542; and
- (b) section 542 applies to the document as if it were included in a register.

(5) If particulars of any land are recorded in the environmental management register or contaminated land register, they must include the real property description of the land.

(6) Subject to subsections (1) to (5), the authority may keep a register in the way it considers appropriate, including, for example, on the authority's web site on the internet.

Inspection of register

542.(1) The administering authority must, for a register mentioned in section 540(1), other than the environmental management register or contaminated land register—

- (a) keep the register open for inspection by members of the public during office hours on business days at the agency's relevant office for the administration of this Act; and
- (b) permit a person to take extracts from the register or, on payment of the appropriate fee by a person, give the person a copy of the register, or part of it.

(2) The fee for a copy of the register or part of it is the amount that—

- (a) the administering authority considers to be reasonable; and
- (b) is not more than the reasonable cost of making the copy.

(3) Also, the administering authority must, on payment of the fee prescribed under a regulation, permit members of the public to obtain extracts from the environmental management register or contaminated land register.

Appropriate fee for copies

543.(1) This section applies if, under this Act, the administering authority or other entity must, on payment of the appropriate fee to the entity, give a person a copy of a document, or a part of a document.

(2) The fee for the copy of the document or part of it is the amount that is the lesser of the following—

- (a) the amount the authority decides is reasonable;
- (b) the amount that is no more than the reasonable cost incurred by the authority or other entity in making the copy and giving it to the person.

(3) Despite subsection (2) or any other provision of this Act, the authority or other entity may give the document without the payment.

(4) In this section—

“document” does not include the following registers or an extract from the registers—

- (a) the environmental management register;
- (b) the contaminated land register.

Approved forms

544.(1) The administering executive may approve forms for use under this Act.

(2) A form may be approved for use under this Act that is combined with, or is to be used together with, an approved form under another Act.

Advisory committees

545.(1) The Minister may establish as many advisory committees as the Minister considers appropriate for the administration of this Act.

(2) An advisory committee has the functions the Minister decides.

(3) A member of an advisory committee is entitled to be paid the fees and allowances decided by the Governor in Council.

Annual reports

546.(1) Within 2 months after the end of each financial year, each administering authority must give to the chief executive a report on its administration of this Act during the year.

(2) Subsection (1) does not apply if the chief executive is the administering authority.

(3) The report must—

(a) be in the form approved by the chief executive; and

(b) contain the following information—

(i) the types and number of environmentally relevant activities administered by the authority;

(ii) the action taken by the authority to enforce this Act;

(iii) the number of complaints about contraventions of this Act received by the authority;

(iv) the other information the chief executive requires by written notice given to the administering authority at least 2 months before the end of the financial year.

(4) Within 3 months after the end of each financial year, the chief executive must give to the Minister a report on the administration of this Act during the year.

(5) The chief executive's report must include a statement about requests received by the Minister to prepare environmental protection policies and a brief statement of the reasons for refusing any request.

(6) Each administering authority's report must be attached to the chief executive's report.

(7) The Minister must table a copy of the chief executive's report in the Legislative Assembly within 14 sitting days after receiving it.

State of environment report

547.(1) At least every 4 years, the chief executive must prepare and publish a report on the state of Queensland's environment.

(2) The report must—

- (a) include an assessment of the condition of Queensland's major environmental resources; and
- (b) identify significant trends in environmental values; and
- (c) review significant programs, activities and achievements of persons and public authorities about the protection, restoration or enhancement of Queensland's environment; and
- (d) evaluate the efficiency and effectiveness of environmental strategies implemented to achieve the object of this Act.

(3) The Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after receiving it.

CHAPTER 12—MISCELLANEOUS

PART 1—APPROVAL OF CODES OF PRACTICE AND STANDARD ENVIRONMENTAL CONDITIONS

Codes of practice

548.(1) The Minister may, by gazette notice, approve codes of practice stating ways of achieving compliance with the general environmental duty for any activity that causes, or is likely to cause, environmental harm.

(2) The Minister must keep copies of approved codes of practice open for inspection by members of the public during office hours on business days at—

- (a) the department's head office; and
- (b) the other places the Minister considers appropriate.

Minister may approve standard environmental conditions

549.(1) This section applies if a code of environmental compliance contains standard environmental conditions for carrying out an environmentally relevant activity.

(2) The Minister may, by gazette notice, approve the conditions.

(3) The Minister must keep copies of approved standard environmental conditions open for public inspection during office hours on business days at—

- (a) the department's head office; and
- (b) the other places the Minister considers appropriate.

Effect of changes to standard environmental conditions

550.(1) This section applies if—

- (a) standard environmental conditions apply for an environmental authority (the “**existing conditions**”); and
- (b) after the grant of the authority, the standard environmental conditions are changed.

(2) The existing conditions continue to apply to the authority, despite the change.

(3) Subsection (2) is subject to any amendment of the authority.

PART 2—GENERAL PROVISIONS ABOUT APPLICATIONS AND SUBMISSIONS

Division 1—Preliminary

Definitions for pt 2

551. In this part—

“**applicant**”, for an EMP submission, means the person or public authority that made the submission.

“**deciding**”, for an application or submission, includes the following—

- (a) a step required for considering or deciding the application or submission;

- (b) imposing a condition;
- (c) including a condition in a draft environmental authority;
- (d) for an application under chapter 5¹¹³ for which an assessment level decision is required—making the assessment level decision.

“EMP submission” means a submission for approval of, or an approval of an amendment to, an environmental management program.

Division 2—General provisions

What is the “application date” for application or EMP submission

552.(1) This section applies if a person—

- (a) applies to amend or transfer an environmental authority, other than an environmental authority (mining activities); or
- (b) makes an EMP submission.

(2) The **“application date”** for the application or submission is the day that is 14 days after the day it is made to the administering authority.

(3) However, if, within 10 days after that day, the authority requires additional information relating to the application or submission, the **“application date”** is the day the authority states as the application date in a written notice given by it to the person.

(4) The application date stated in the notice must not be a day earlier than 2 days after the person’s receipt of the notice.

Electronic applications and submissions

553.(1) This section applies if—

- (a) this Act requires an application or submission to be made in an approved form; and
- (b) the form provides that the application or submission may be made at a stated e-mail address.

¹¹³ Chapter 5 (Environmental authorities for mining activities)

(2) The application or submission may be made by electronically transmitting to the e-mail address the information required by the approved form in a format substantially similar to the approved form.

Electronic notices about applications and submissions

554.(1) This section applies if an application or submission has been made in an approved form, whether or not it has been made under section 553.

(2) A notice from the applicant to the administering authority about the application or submission may be given by electronically transmitting it to any e-mail address for service for the authority stated in the approved form.

(3) A notice from the authority or anyone else to the applicant about the application or submission may be given by electronically transmitting it to any e-mail address for service for the applicant stated in the application.

Extension of decision period

555.(1) This section applies if the administering authority is deciding, or is required to decide, an application for, an environmental authority or an EMP submission.

(2) The authority may extend the required period to make the decision if, before the extension starts, it gives the applicant for the application an information notice about the decision to extend.

Administering authority may seek advice, comment or information

556.(1) If the administering authority is deciding, or is required to decide, an application or EMP submission, it may require—

- (a) the applicant to give the authority stated additional information about the application or EMP submission; or
- (b) any information given in the application or EMP submission, or any additional information required under paragraph (a), to be verified by statutory declaration.

(2) The authority must, within 10 business days after deciding to make a requirement under subsection (1), give the applicant an information notice

about the decision.

(3) The authority may seek relevant advice, comment or information from another person and the request may be by public notice.

(4) Also, if the application is for, or relates to, an environmental authority (mining activities), the administering authority may give anyone a document or information about the application that is not subject to a disclosure exemption.

(5) Asking for and receiving, or giving, a document or advice, comment or information under this section does not—

- (a) replace any public notice or other step required to decide the application or EMP submission; or
- (b) extend or reduce the period required for deciding the application or EMP submission or taking a step in deciding the application or submission.

(6) However, subsection (5)(b) does not limit section 555.

Decision criteria are not exhaustive

557.(1) This section applies if—

- (a) an entity is deciding, or is required to decide, an application or EMP submission under this Act; and
- (b) a provision of this Act requires the entity, in making the decision, to consider stated criteria or matters.

(2) The stated criteria or matters do not limit the criteria or matters the entity may consider in making the decision.

Publication of decision or document by administering authority

558.(1) This section applies if a provision of this Act requires the administering authority to publish a decision or document.

(2) The publication may be made by placing a link to a record or register of the decision or to the document on the authority's web site on the

internet.¹¹⁴

(3) The decision or document may also be published in any other way decided by the chief executive.

(4) In this section—

“**publish**” includes make available for public inspection, including, for example, insert or record particulars of in an appropriate register.

Division 3—Investigating suitability

Investigation of applicant suitability or disqualifying events

559.(1) The administering authority may investigate a person to help it decide whether—

- (a) the person is a suitable person to hold, or continue to hold, an environmental authority; or
- (b) a disqualifying event has happened in relation to the person.

(2) The administering authority may obtain a report on the person from an administering authority of another State under a corresponding law about a matter mentioned in subsection (1).

(3) The commissioner of the police service must, if asked by the authority, give it a written report about any convictions for environmental offences recorded against the person obtained from—

- (a) information in the commissioner’s possession; and
- (b) information the commissioner can reasonably obtain by asking officials administering police services in other Australian jurisdictions.

(4) However, subsection (3) is subject to the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

¹¹⁴ At the commencement of this section, the administering authority’s web site on the internet could be located at <www.env.qld.gov.au>.

Use of information in suitability report

560.(1) This section applies if the administering authority is considering information contained in a report about a person obtained under section 559 (a “**suitability report**”).

(2) The information must not be used for any purpose other than to make the decision for which the report was obtained.

(3) In making the decision, the administering must have regard to the following matters relating to information about the commission of an offence by the person—

- (a) when the offence was committed;
- (b) the nature of the offence and its relevance to the decision.

Notice of use of information in suitability report

561. Before using information contained in a suitability report to assess a matter mentioned in section 559(1), the administering authority must—

- (a) disclose the information to the person to whom the report relates; and
- (b) allow the person a reasonable opportunity to make representations to the authority about the information.

Confidentiality of suitability reports

562.(1) This section applies to a person who—

- (a) is, or has been a public service employee or an employee of a local government; and
- (b) has, in that capacity acquired information, or gained access to a suitability report about someone else (the “**second person**”).

(2) The person must not disclose the information, or give access to the report, to anyone else.

Maximum penalty—100 penalty units.

(3) However, subsection (2) does not apply if the disclosure of the information, or giving of access to the report is—

- (a) with the second person's written consent; or
- (b) to an employee of the authority for making the decision for which the report was obtained; or
- (c) to the tribunal or the Court; or
- (d) to a person carrying out functions for the tribunal, Court or administering authority; or
- (e) to a person employed or engaged to give advice to the tribunal or administering authority in the carrying out of its functions; or
- (f) under a direction or order made in a proceeding; or
- (g) expressly permitted or required under another Act.

Destruction of suitability reports

563.(1) This section applies if the administering authority has obtained a suitability report and it has made the decision for which the report was obtained.

(2) The authority must destroy the report as soon as practicable after the later of the following—

- (a) if the report wholly or partly relates to a conviction for an environmental offence—
 - (i) if an appeal is made against the conviction—the deciding or other ending of the appeal and any appeal from that appeal; or
 - (ii) otherwise—the end of the period to appeal against the conviction;
- (b) the end of the period under this Act to appeal against, or apply for a review of, the decision;
- (c) the deciding or other ending of an appeal or review mentioned in paragraph (b) and any appeal from that appeal or review.

PART 3—EXEMPTION FROM DISCLOSURE

Division 1—Obtaining disclosure exemption

Who may apply

564. A person may apply to the administering authority for an exemption (a “**disclosure exemption**”) from disclosure for stated information contained in a document submitted, or proposed to be submitted, by the person under this Act.

Requirements for application

565. A disclosure exemption application must—

- (a) be in the approved form; and
- (b) state that the disclosure of the information the subject of the application is, in the applicant’s opinion, likely to disadvantage the applicant’s interests; and
- (c) identify the nature and extent of the disadvantage; and
- (d) state the nature of the disadvantage; and
- (e) state that the information is—
 - (i) not required to be disclosed under another law of the State; and
 - (ii) not publicly available; and
- (f) be supported by enough information to allow the authority to decide the application.

Deciding application

566. The administering authority must, within 20 business days after it receives the application, consider the application and decide either to grant or refuse it.

Criteria for decision

567. The administering authority may grant a disclosure exemption application only if it is satisfied—

- (a) the information sought to be exempted is—
 - (i) not required to be disclosed under another law of the State; and
 - (ii) not publicly available; and
- (b) disclosure of the information is likely to disadvantage the applicant's interests; and
- (c) the disadvantage outweighs the public interest in the information being disclosed.

Exemption may be limited

568. The administering authority may grant a disclosure exemption application—

- (a) for the whole or part of the information the subject of the application; and
- (b) for only a stated period.

Notice of refusal or decision to limit exemption

569.(1) This section applies if the administering authority decides to—

- (a) refuse a disclosure exemption application; or
- (b) allow a disclosure exemption application, but only for part of the information the subject of the application; or
- (c) grants the application for only a stated period.

(2) The authority must, within 10 business days after the decision is made, give the applicant an information notice about the decision.

Division 2—Effects of disclosure exemption***Subdivision 1—Preliminary*****Application of div 2**

570. This division applies if a disclosure exemption application has been granted and any period for which the application was granted has not ended.

Meaning of “exempted material” for div 2

571.(1) In this division, “**exempted material**” means—

- (a) information the subject of a disclosure exemption; or
- (b) a part of a document submitted, or proposed to be submitted, under this Act that contains the information.

(2) However, material that is exempted material under subsection (1) ceases to be exempted material if it is publicly disclosed by anyone who obtained the disclosure exemption.

Subdivision 2—Effects**Effect on operation of disclosure requirements under Act**

572. If a provision of this Act requires exempted material to be disclosed, the provision only has effect to the extent it requires the disclosure to be made—

- (a) to a person with the applicant’s written consent; or
- (b) to the administering authority; or
- (c) to the tribunal or the Court; or
- (d) to a person carrying out functions for the tribunal, the Court or the authority; or
- (e) to a person employed or engaged to give advice to the tribunal,

- Court or the authority in the carrying out of its functions; or
- (f) under a direction or order made in a proceeding.

Effect on administering authority

573. The administering authority must not disclose exempted material to anyone other than the applicant for the disclosure exemption, unless the disclosure is—

- (a) made under section 572; or
- (b) expressly permitted or required under another Act.

Effect on officials

574.(1) An official must not disclose exempted material acquired by the official in the official's capacity as an official to anyone else, unless the disclosure is—

- (a) made under section 572; or
- (b) expressly permitted or required under another Act.

Maximum penalty—100 penalty units.

(2) In this section—

“official” means—

- (a) a person who is, or has been, a public service employee; or
- (b) another person performing functions under or in relation to the administration of this Act.

PART 4—ENTRY TO LAND TO COMPLY WITH ENVIRONMENTAL REQUIREMENT

Entry orders

575.(1) This section applies if an environmental requirement requires a

person to conduct work in relation to land to which the requirement relates (the “**primary land**”).

(2) The person may apply to a Magistrates Court for an order (an “**entry order**”) to enter—

- (a) the primary land; or
- (b) other land (“**access land**”) that is necessary or desirable to cross to enter the primary land.

(3) The application must state fully the grounds on which the entry order is sought.

(4) The applicant must serve a copy of the application on—

- (a) the owner of the primary land and any access land; and
- (b) if the owner of the primary land or any access land is not the occupier of that land—the occupier.

(5) The court may make an entry order only if it is satisfied it is necessary and reasonable to comply with an environmental requirement.

(6) However, the court must not make an entry order that authorises entry to a structure, or a part of a structure, used for residential purposes.

(7) An entry order must state the following—

- (a) that the applicant may, with necessary and reasonable help—
 - (i) enter the primary land to conduct work to comply with a stated environmental requirement; and
 - (ii) cross any access land to enter the primary land under subparagraph (i);
- (b) the hours of the day when an entry under paragraph (a) may be made;
- (c) the nature of the work that may be conducted on the primary land;
- (d) the day when the order ends.

(8) An entry order may be made with other conditions.

(9) Without limiting subsection (8), a condition may—

- (a) require security to be given for the benefit of anyone who might suffer a cost, damage or loss because of the exercise or purported

- exercise of a power under an entry order; and
- (b) provide for how and when the security may be released or used.

Procedure for entry under entry order

576.(1) This section applies if—

- (a) a person (the “**entering person**”) is intending to enter land under an entry order; and
- (b) an occupier is present on the land.

(2) Before entering the land, the entering person must do or make a reasonable attempt to—

- (a) identify himself or herself to the occupier; and
- (b) give the occupier a copy of the entry order; and
- (c) tell the occupier that the entering person is permitted by the entry order to enter the land.

Duty to avoid damage

577. In exercising a power under an entry order, a person must take all reasonable steps to ensure the person causes as little inconvenience, and does as little damage, as is practicable.

Notice of damage

578.(1) If a person who enters land under an entry order damages the land or something on the land, the person must, as soon as practicable, give written notice of the damage to—

- (a) the owner of the land; and
- (b) if the owner is not the occupier of the land—the occupier; and
- (c) the administering authority.

(2) However, if for any reason it is not practicable to comply with subsection (1), the person must—

- (a) leave the notice at the place where the damage happened; and

- (b) ensure it is left in a conspicuous position and in a reasonably secure way.
- (3) The notice must state—
 - (a) particulars of the damage; and
 - (b) that the person who suffered the damage may claim compensation under section 579 from the person who obtained the entry order.

Compensation

579.(1) This section applies if a person (the “**claimant**”) suffers a cost, damage or loss because of the exercise or purported exercise of a power under an entry order.

Example of ‘loss’—

Inability or interference with the lawful enjoyment or use of the land the subject of the order.

(2) Compensation is payable to the claimant by the person who obtained the entry order.

(3) The compensation may be claimed and ordered in a proceeding brought in a court of competent jurisdiction.

(4) A court may order the payment of the compensation only if it is satisfied it is just to make the order in the circumstances of the particular case.

PART 5—REGULATIONS

Regulation-making power

580.(1) The Governor in Council may make regulations under this Act.

(2) A regulation may be made about any of the following matters—

- (a) the matters for which fees are payable under this Act, the amounts of the fees, the persons who are liable to pay fees, when the fees

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- are payable, the recovery of unpaid amount of fees, and the exemption from payment of fees or the waiver of fees;
- (b) the records to be kept and returns to be made by persons and the inspection of the records;
 - (c) the types of tests and monitoring programs to be conducted by holders of environmental authorities;
 - (d) the types of plant or equipment that may be used for environmentally relevant activities and the way in which the plant or equipment is to be installed, operated and maintained;
 - (e) help, access and facilities to be provided to authorised persons by persons for inspections, examinations, tests and measurements for this Act;
 - (f) the taking, preserving and transporting of samples and the making of inspections, examinations, tests, measurements and analyses for this Act, and the proof of them;
 - (g) setting standards, controls or procedures for the manufacture, generation, sale, use, transportation, storage, treatment or disposal of a contaminant, including waste;
 - (h) the removal, collection, transport, deposit, storage or disposal of waste;
 - (i) the qualifications or licence required by a person engaged in carrying out an environmentally relevant activity, and the approval of training courses to provide the qualifications or licence;
 - (j) environmental impact assessments, reports, statements or studies;
 - (k) requirements for EISs or the EIS process to allow—
 - (i) the process to be accredited under the Commonwealth Environment Act; or
 - (ii) the making of a bilateral agreement; or
 - (iii) the State to meet its obligations under a bilateral agreement;
 - (l) litter;
 - (m) the keeping of the environmental management register and contaminated land register, including, for example, the

information to be included in the registers and made available to persons searching the registers;

- (n) the approval or making of codes of environmental compliance;
- (o) the appointment and qualifications of environmental auditors;
- (p) the carrying out of environmental audits;
- (q) requirements for environmental audit reports;
- (r) audit statements;
- (s) financial assurance.

(3) Without limiting subsection (2)(a), a regulation may prescribe fees by reference to—

- (a) factors related to the quantity or quality of contamination caused or likely to be caused by the persons liable to pay the fees; or
- (b) other factors.

(4) Also, without limiting subsection (2)(a), a regulation may prescribe fees payable to the administering authority in relation to its functions under the Integrated Planning Act, as assessment manager or concurrence agency, including, for example—

- (a) application fees for development applications; and
- (b) fees for monitoring compliance with development conditions on a development approval.

(5) A regulation may be made to give effect to, and enforce compliance with, a national environment protection measure made under the national scheme laws.

(6) A regulation may be made—

- (a) creating offences against the regulation; and
- (b) fixing a maximum penalty of a fine of 165 penalty units for an offence against the regulation.

Integrated development approval system regulations and guidelines

581.(1) This section applies if the administering authority delegates the authority's powers under this Act to a local government.

(2) A regulation may make provision about, or empower the administering authority to make guidelines about—

- (a) the policy objectives and criteria to which the local government must have regard; and
- (b) the way in which the local government must exercise a delegated power, including, for example, time limits for the making of decisions; and
- (c) appeals from the local government's decisions; and
- (d) the cases involving the exercise of a delegated power that must be referred to the administering authority or someone else for decision, including the criteria to be applied in deciding whether a particular case must be referred; and
- (e) the conditions to which an authority issued by the delegate must be subject; and
- (f) the consequences of contravention of the regulation or guidelines.

(3) This section does not limit the *Acts Interpretation Act 1954*, section 27A.¹¹⁵

CHAPTER 13—SAVINGS, TRANSITIONAL AND RELATED PROVISIONS

PART 1—PROVISIONS FOR ENVIRONMENTAL PROTECTION AND OTHER LEGISLATION AMENDMENT ACT 1997

Transfer of certain land on contaminated sites register to environmental management register

582.(1) This section applies to land that, immediately before the

¹¹⁵ *Acts Interpretation Act 1954*, section 27A (Delegation of powers)

commencement of this section, was recorded in the contaminated sites register under the *Contaminated Land Act 1991* as being classified as a probable site or restricted site.

(2) The administering authority must, on or before the commencement, record particulars of the land in the environmental management register.

(3) Any conditions on the use or management of the land recorded in the contaminated sites register continue to apply to the land as if the conditions were contained in a site management plan prepared for the land under this Act.

(4) To remove any doubt, it is declared that the owner of land to which this section applies does not have a right of review under section 521, or appeal under section 531, in relation to the recording of particulars of the land in the environmental management register.

Transfer of certain land on contaminated sites register to contaminated land register

583.(1) This section applies to land that, immediately before the commencement of this section, was recorded in the contaminated sites register under the *Contaminated Land Act 1991* as being classified as a confirmed site.

(2) The administering authority must, on or before the commencement, record particulars of the land in the contaminated land register.

(3) To remove any doubt, it is declared that the owner of land to which this section applies does not have a right of review under section 521 or appeal under section 531 in relation to the recording of particulars of the land in the contaminated land register.

**PART 2—PROVISIONS FOR ENVIRONMENTAL
PROTECTION AND OTHER LEGISLATION
AMENDMENT ACT 2000**

Division 1—Preliminary

Definitions for pt 2

584. In this part—

“amending Act” means the *Environmental Protection and Other Legislation Amendment Act 2000*.

“commencement day” means the day this section commences.

“condition”, of a mining tenement, for division 2, see section 585.

“conversion application” see section 603(2).

“environmental document requirement” means a requirement under section 608.

“existing Act” means this Act as it was in force immediately before chapter 5 commenced.

“existing mining activity”, under a mining tenement, means an activity carried out under the tenement on, or at any time before, the commencement day.

“reminder notice” see section 596(2).

“transitional authority”, for division 4, see section 592.

“transitional period” means the period from the commencement day to 5 years after the commencement day.

*Division 2—Existing environmental authorities and mining activities**Subdivision 1—Preliminary***What is a “condition” of a mining tenement for div 2**

585.(1) For this division, a “**condition**” of a mining tenement means any of the following—

- (a) a condition of the mining tenement determined, imposed or prescribed under the Mineral Resources Act;
- (b) a condition of, or stated in, the mining tenement;
- (c) a commitment, obligation, requirement or undertaking under, or stated in, the most recent version of a planning document for the mining tenement.

(2) For subsection (1)(c), the most recent version of a planning document is taken to be the original planning document adopted by the MRA department, as amended from time to time by any amendment or purported amendment of the document adopted by that department.

(3) For subsection (2), a document or amendment is taken to have been adopted by the MRA department if—

- (a) it has been accepted or approved under the Mineral Resources Act by the MRA Minister, the mining registrar, the MRA department or an officer of that department; or
- (b) the MRA department, or an officer of that department, has accepted or approved, or purported to accept or approve, the document or amendment, whether or not the acceptance or approval was required by, or could lawfully have been made under, the Mineral Resources Act.

(4) In this section—

“**Mineral Resources Act**” means that Act as in force from time to time before the commencement day.

“**MRA department**” means the department through which the Mineral Resources Act is administered.

“planning document”, for a mining tenement, means—

- (a) if the mining tenement is a mining claim—the outline under the Mineral Resources Act, section 61(1)(j)(iv) for the mining claim; or
- (b) if the mining tenement is an exploration permit—the statement under the Mineral Resources Act, section 133(g)(i) specifying a description of the program of work for the permit; or
- (c) if the mining tenement is a mineral development licence—the statement under the Mineral Resources Act, section 183(m) containing proposals for the licence mentioned in that paragraph; or
- (d) if the mining tenement is a mining lease—
 - (i) any EMOS for the lease; and
 - (ii) either—
 - (A) any plan of operations for the lease under the Mineral Resources Act, part 7; or
 - (B) if there is no plan of operations in force for the lease immediately before the commencement day—the most recent expired plan of operations for the lease under the Mineral Resources Act, part 7.¹¹⁶

Subdivision 2—Existing authorities for mining activities

Existing authority becomes an environmental authority (mining activities)

586.(1) This section applies if, immediately before the commencement day—

- (a) an environmental authority is in force; and
- (b) the authority was for, or included, a mining activity.

¹¹⁶ Mineral Resources Act, sections 61 (Application for grant of mining claim), 133 (Application for exploration permit), 183 (Application for mineral development licence) and part 7 (Mining leases)

(2) On the commencement day, the authority, is taken to be an environmental authority (mining activities).

(3) Chapter 5¹¹⁷ applies to the authority, subject to division 4.

Conditions of environmental authority

587.(1) The conditions of an environmental authority that, under section 586, is taken to be an environmental authority (mining activities) are as follows—

- (a) the conditions of the authority immediately before the commencement day;
- (b) each condition of a relevant mining tenement that, had an environmental authority (mining activities) been granted for the relevant mining activity on the commencement day, would reasonably be expected to be a condition of the environmental authority (mining activities);
- (c) any financial assurance condition imposed on the authority under section 598;¹¹⁸
- (d) another condition prescribed under a regulation.

(2) If under subsection (1)(b) a condition of a relevant mining tenement becomes a condition of the authority, it ceases to have effect as a condition of the tenement.

(3) Subsection (2) applies despite the Mineral Resources Act.

Subdivision 3—Existing mining activities without environmental authority

New environmental authority (mining activities) for existing activities

588.(1) This section applies if, immediately before the commencement day—

¹¹⁷ Chapter 5 (Environmental authorities for mining activities)

¹¹⁸ Division 4 (Transitional authorities for mining activities), section 598 (Financial assurance for transitional authority)

- (a) a person holds a mining tenement; and
- (b) there is no environmental authority in force for any mining activity authorised under the mining tenement.

(2) On the commencement day, the person, is taken to hold a single environmental authority (mining activities) for all existing mining activities under the mining tenement that, immediately before the commencement day, were level 2 environmentally relevant activities.

(3) However, if the mining tenement was part of a mining project, the person is taken to hold a single environmental authority (mining activities) for all existing mining activities under the mining tenements that form the project.

(4) Chapter 5 applies to the authority, subject to division 4.

Conditions of environmental authority

589.(1) The conditions of an environmental authority (mining activities) under section 588 are—

- (a) each condition of a relevant mining tenement that would reasonably be expected to be a condition of the authority; and
- (b) any financial assurance condition imposed on the authority under section 598;
- (c) another condition prescribed under a regulation.

(2) If, under subsection (1)(a), a condition of a relevant mining tenement becomes a condition of the authority, it ceases to have effect as a condition of the tenement.

(3) Subsection (2) applies despite the Mineral Resources Act.

Division 3—Unfinished applications

Procedure if certificate of application issued and conditions decided

590.(1) The existing Act applies to an environmental authority application if, before the commencement day—

- (a) a person applied for a mining tenement and an environmental

authority in relation to the tenement; and

- (b) a certificate of application for the mining tenement application was endorsed by the mining registrar; and
- (c) the administering authority has decided conditions for the environmental authority; and
- (d) the mining tenement has not been granted and the environmental authority has not been issued.

(2) An environmental authority issued by applying the existing Act becomes an environmental authority (mining activities) immediately after it is issued.

(3) However, despite any provision of the existing Act, the conditions of the environmental authority must only be—

- (a) the decided conditions; and
- (b) any condition that—
 - (i) under the Mineral Resources Act, would have been imposed on a relevant mining tenement had the amending Act not been enacted; and
 - (ii) had an environmental authority (mining activities) been granted for each relevant mining activity on the commencement day, would reasonably be expected to be a condition of the environmental authority (mining activities); and
- (c) any financial assurance condition imposed on the authority under section 598.

(4) Chapter 5 applies to the authority, subject to division 4.

(5) In this section—

“certificate of application” means a certificate of application under the Mineral Resources Act, section 64 or 252, as in force immediately before the commencement day.¹¹⁹

¹¹⁹ Sections 92 (Conditions that may and must be imposed) and 598 (Financial assurance for transitional authority)
Chapter 5 (Environmental authorities for mining activities)
Mineral Resources Act, sections 64 and 252 (Certificate of application etc.)

Procedure for other unfinished applications

591.(1) This section applies if—

- (a) before the commencement day, a person applied for a mining tenement; and
- (b) the mining tenement has not been granted; and
- (c) an environmental authority application in relation to the mining tenement is not an application to which, under section 590(1), the existing Act applies.

(2) The environmental authority application is taken to have been made on the commencement day.

(3) Chapter 5 applies to the application.

(4) However, the following do not apply—

- (a) a time requirement under that chapter for the administering authority to—
 - (i) make an assessment level decision; or
 - (ii) take a step for deciding the application; or
 - (iii) decide the application or make a decision about the application;
- (b) sections 169 and 182.¹²⁰

Division 4—Transitional authorities for mining activities***Subdivision 1—Preliminary*****Meaning of “transitional authority” for div 4**

592.(1) For this division, a “**transitional authority**” means—

- (a) an existing environmental authority that, under section 586 is taken to be an environmental authority (mining activities); or

¹²⁰ Sections 169 (Consequence of failure to decide) and 182 (Consequence of failure to decide)

- (b) a new environmental authority (mining activities) that, under section 588, is taken to be held by a person; or
- (c) an environmental authority (mining activities) if, under section 590(1), the existing Act applied to the application for the authority.

(2) However, a transitional authority under subsection (1) ceases to be a transitional authority if it is—

- (a) amended under subdivision 3; or
- (b) transferred.¹²¹

(3) Subsection (2) does not affect the authority continuing to be an environmental authority (mining activities) after it ceases to be a transitional authority.

Subdivision 2—Special provisions for transitional authorities

Transitional authority taken to be non-standard

593. A transitional authority is taken to be a non-standard environmental authority (mining activities).

Limited application of s 427 for transitional authority

594.(1) Section 427 does not apply to a person carrying out an existing mining activity under a mining tenement that is not authorised under a transitional authority or environmental authority (mining activities) issued under section 590 if the holder of a transitional authority has—

- (a) made a relevant amendment application and the application has not been decided; or
- (b) given the administering authority notice of the activity (“**activity notice**”) and no more than 30 days have passed since the notice was given.

(2) However, an activity notice can not be given if an activity notice has

¹²¹ See also section 603(9) (Conversion to standard authority by application).

already been given for the activity or another activity that is substantially the same as the activity.

(3) An activity notice must state—

- (a) the mining tenement under which the existing activity is being carried out; and
- (b) the nature of the activity; and
- (c) that the activity is not authorised under the conditions of the transitional authority.

(4) To remove any doubt, it is declared that this section does not limit the application of sections 430 and 431 to the transitional authority or environmental authority (mining activities).

(5) In this section—

“relevant amendment application” means an application to amend the transitional authority that, if granted, would allow the carrying out of the activity under the authority.¹²²

Requirement to apply to amend or surrender transitional authority

595.(1) The holder of a transitional authority must, within the required period, make in relation to the authority—

- (a) a conversion application; or
- (b) an amendment, surrender or transfer application under chapter 5.

(2) Also, if the holder does not also hold a relevant mining tenement, the holder must, on the happening of the earlier of the following, make a surrender application or an application under section 607 for the authority—

- (a) the replacement or amendment, under section 235, of any plan of operations for the authority;

¹²² Sections 590 (Procedure if certificate of application issued and conditions decided), 427 (Environmental authority or development approval required for level 2 environmentally relevant activity), 430 (Contravention of condition of environmental authority) and 431 (Environmental authority holder responsible for ensuring conditions complied with)

(b) 90 days before the transitional period ends.¹²³

(3) In this section—

“required period” means—

- (a) if the person is, under section 588, taken to hold the authority—6 months after the commencement day; or
- (b) otherwise—the transitional period.

Notice by administering authority to amend or surrender transitional authority

596.(1) This section applies if the holder of a transitional authority does not make an application required under section 595.

(2) The administering authority may, by written notice (a **“reminder notice”**), require the holder to make the application within a fixed period of at least 10 business days.

(3) The reminder notice must state the following—

- (a) the application the holder is required to make under section 595;
- (b) the period fixed for making the application;
- (c) reasons for the decisions to make the requirement and to fix the period;
- (d) the review or appeal details for the decisions.

Consequences of failure to comply with reminder notice

597.(1) A person to whom a reminder notice has been given must comply with the notice unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

(2) The failure to comply with the reminder notice is, for applying

¹²³ Sections 607 (Consolidation of conditions for same mining project) and 235 (Amending or replacing plan)

chapter 5, part 12 to the transitional authority, taken to be an event mentioned in section 293(2).¹²⁴

Financial assurance for transitional authority

598.(1) This section applies if, under the Mineral Resources Act, security has been deposited or required in relation to a relevant mining tenement for a transitional authority.

(2) A condition is taken to have been imposed, under section 364, on the authority that the authority holder must give the administering authority financial assurance for each relevant mining tenement.

(3) If the security has been deposited under the Mineral Resources Act for a relevant mining tenement, the requirement under the condition to give the financial assurance is taken to have been complied with for the tenement.

(4) The financial assurance required under the condition is taken to be security for the matters mentioned in section 364(1)(a) and (b) in relation to the transitional authority.

(5) Subsection (4) applies despite the Mineral Resources Act or the terms of an instrument granting the security or other document, including, for example, a term that the security or its benefit is not transferable.

(6) For section 364(1), the form of the financial assurance for each relevant mining tenement is taken to have been required in the same form as each security given or required for the tenement.

(7) However, the financial assurance is taken to have been given for valuable consideration and any instrument granting it is taken to have been executed as a deed under seal by each party to the instrument.

(8) The amount of financial assurance for each relevant mining tenement is taken to have been decided under section 364(3) as the lesser of the following—

- (a) the amount of security given or required for each relevant mining tenement;
- (b) any amount the administering authority decides would have been

¹²⁴ Chapter 5, part 12 (Amendment, cancellation or suspension by administering authority) and section 293 (Conditions)

the amount under section 364(3) for the financial assurance had the amount been decided on the commencement day.

(9) Section 365 and chapter 11, part 3 do not apply to financial assurance under this section or to a decision under subsection (8)(b).¹²⁵

Effect of financial assurance on security

599.(1) The financial assurance condition under section 598 only affects a security to the extent provided under that section.

(2) Without limiting subsection (1), section 598 does not affect or change—

- (a) the security as a security under the Mineral Resources Act; or
- (b) the matters for which the security was given under that Act; or
- (c) the enforcement of the security under that Act, as amended by the amending Act.

(3) Section 598, or any thing done under it, does not—

- (a) discharge a security; or
- (b) discharge or release a surety or other obligee, wholly or partly, from an obligation; or
- (c) fulfil a condition allowing a person to terminate an instrument or be released, wholly or partly, from an obligation or modify the operation or effect of an instrument or obligation.

(4) If the advice or consent of, or giving notice to, a person would be necessary to give effect to the giving of the financial assurance—

- (a) the advice is taken to have been obtained; and
- (b) the consent or notice is taken to have been given.

¹²⁵ Sections 364 (When financial assurance may be required) and 365 (Person may show cause why financial assurance should not be required) and chapter 11, part 3 (Review of decisions and appeals)

Plan of operations

600.(1) This section applies if a transitional authority is an environmental authority (mining lease).

(2) If a plan of operations for a relevant mining lease is in force under the Mineral Resources Act immediately before the commencement day, the plan—

- (a) is taken to be the plan of operations for the transitional authority submitted under section 233; but
- (b) continues in force only until the earlier of the following—
 - (i) the end of the period that the plan would, other than for the amending Act, have been in force under the Mineral Resources Act;
 - (ii) the plan is replaced under section 235.¹²⁶

(3) If there is no plan of operations in force for a relevant mining lease immediately before the commencement day, the most recent expired plan of operations under the Mineral Resources Act for the lease—

- (a) is taken to be the plan of operations for the transitional authority submitted under section 233; but
- (b) continues in force only until 6 months after the commencement day.

(4) Section 540(1)(d)(vi) does not apply to a plan of operations that, under this section, is taken to be the plan of operations for an authority.

Annual fee and return for first year of transitional period

601.(1) This section applies to the holder of a transitional authority, instead of section 316,¹²⁷ for the first year of the transitional period.

(2) The holder must, unless the holder has a reasonable excuse, do the following on or before the end of the first year—

¹²⁶ Sections 233 (Plan of operations required before acting under relevant mining lease) and 235 (Amending or replacing plan)

¹²⁷ Section 316 (Annual fee and return)

- (a) pay the administering authority the appropriate annual fee, other than in a circumstance prescribed under a regulation for this paragraph; and
- (b) give the authority an annual return in the approved form.

Maximum penalty—100 penalty units.

(3) The administering authority may recover, as a debt, a fee required to be paid under this section that has not been paid.

(4) This section does not affect the application of section 316 for the holder or the transitional authority for any period other than the first year of the authority.

Anniversary day for certain transitional authorities

602.(1) The anniversary day for a transitional authority is the commencement day if—

- (a) under section 588,¹²⁸ a person is taken to hold the authority; or
- (b) the authority was a level 2 approval under the existing Act.¹²⁹

(2) If a transitional authority ceases to be a transitional authority, but becomes another type of environmental authority (mining activities), the anniversary day for the environmental authority (mining activities) is taken to be the day the authority ceased to be a transitional authority.

Subdivision 3—Amendment and consolidation of transitional authorities

Conversion to standard authority by application

603.(1) This section applies despite chapter 5, part 8.

(2) A transitional authority holder who holds each relevant mining tenement may apply to the administering authority to amend the transitional authority to substitute the relevant standard environmental conditions for

¹²⁸ Section 588 (New environmental authority (mining activities) for existing activities)

¹²⁹ For other transitional authorities, see schedule 3, definition “anniversary day”.

each relevant mining activity for the existing conditions of the authority (a “**conversion application**”).

(3) A conversion application must—

- (a) be in the approved form; and
- (b) state that each relevant mining activity is a standard mining activity; and
- (c) either—
 - (i) state the relevant standard environmental conditions for each mining activity (the “**standard conditions**”); or
 - (ii) identify the standard conditions by reference to their gazettal or to a code of environmental compliance in which they are contained; and
- (d) state that the applicant applies to substitute the standard conditions for the existing conditions of the environmental authority; and
- (e) state that the applicant is able to comply with the standard conditions.

(4) A conversion application may also seek additional conditions for the authority.

(5) The administering authority must, within 10 business days after it receives the application, decide either to grant or refuse the application and whether to impose any additional conditions sought under the application.

(6) In making the decision, the authority must consider the criteria mentioned in section 173(2).

(7) An additional condition may be imposed only if the authority considers—

- (a) the condition is necessary or desirable; and
- (b) that, if the condition is included, each relevant mining activity would still be a standard mining activity.

(8) Section 244 applies for the decision about the application as if the application were an amendment application under chapter 5, part 8.

(9) If a conversion application is granted, the environmental authority—

- (a) ceases to be to be a non-standard environmental authority (mining

activities); and

(b) becomes a standard environmental authority (mining activities).

(10) This section does not prevent chapter 5, part 8 applying to an amendment application, other than a conversion application, for the transitional authority.¹³⁰

Other amendment applications

604.(1) This section applies if an application, other than a conversion application, is made to amend a transitional authority.

(2) Chapter 5, part 8, applies to the application.

(3) However, chapter 5, part 6, division 6,¹³¹ does not apply to the application if—

- (a) the activities authorised under each relevant mining tenement have not changed since the commencement day; and
- (b) no application has been made to change the activities authorised under any relevant mining tenement.

Additional grounds for amendment by administering authority

605. For applying section 292 for a transitional authority, the following grounds apply, as well as the grounds under section 292(2)—

- (a) the ending of the transitional period;
- (b) the administering authority can not, by applying section 587 or 589, work out the conditions of the transitional authority;
- (c) a condition of the transitional authority under section 587 or 589 creates a right or imposes an obligation that the administering authority considers is uncertain or not reasonably enforceable;

¹³⁰ Chapter 5, part 8 (Amendment of authorities by application)
Sections 173 (Administering authority may refuse application) and 244 (Steps after making decision)
See also section 592(2) (Meaning of “transitional authority” for div 4).

¹³¹ Chapter 5, part 6, division 6 (Public notice and objections stage for all applications). See also section 251 (Relevant application process applies).

- (d) if the transitional authority is an environmental authority (mining lease)—the authority holder submits or amends a plan of operations for the authority;
- (e) the amendment is necessary to prevent environmental harm not already authorised under the environmental authority.¹³²

Ministerial power to amend

606.(1) This section applies to an environmental authority (mining activities) that is, or has been, a transitional authority.

(2) During the transitional period the Minister may amend the authority if the Minister—

- (a) gives the environmental authority holder a written notice (an “**amendment notice**”) stating—
 - (i) the proposed amendment; and
 - (ii) the Minister’s reasons for the amendment; and
 - (iii) that the holder may, within a stated period of at least 10 business days, make written representations to show why the amendment should not be made; and
- (b) considers any written representations made by the holder within the stated period.

(3) The administering authority must, within 10 business days after the Minister decides to amend the environmental authority—

- (a) make the amendment; and
- (b) give the holder a copy of the amended environmental authority; and
- (c) record particulars of the amendment in the appropriate register.

(4) If the Minister gave an amendment notice, but decided not to make the proposed amendment, the administering authority must, within

¹³² Sections 292 (Other amendments—non-standard authorities), 587 and 589 (Conditions of environmental authority)

10 business days after the decision is made, give the holder a written notice of the decision.

Consolidation of conditions for same mining project

607.(1) This section applies—

- (a) if more than 1 person holds a transitional authority for the same mining project; and
- (b) despite chapter 5.

(2) A person who holds a transitional authority for the project, may apply to the administering authority to—

- (a) amend any environmental authority (mining activities) held by a stated holder of a relevant mining tenement to include the conditions of the applicant's transitional authority; and
- (b) surrender the applicant's transitional authority.

(3) The application must—

- (a) be in the approved form; and
- (b) if the stated mining tenement holder is not the applicant—be accompanied by the tenement holder's written consent.

(4) The administering authority must, within 10 business days after it receives the application, decide either to grant or refuse it.

(5) If the authority decides to grant the application, it must within 10 business days after the decision is made—

- (a) amend the stated mining tenement holder's environmental authority (mining activities) to give effect to the amendment; and
- (b) record the surrender in the appropriate register; and
- (c) give the mining tenement holder a copy of the amended authority.

(6) The amendment takes effect on the day of the amendment or a later day stated in the amended authority.

(7) If the authority decides to refuse the application, it must within 10 business days after the decision is made, give each applicant an information notice about the decision.

(8) This section does not limit the authority's power to amend an environmental authority (mining activities) under chapter 5, part 12 or section 605.¹³³

Subdivision 4—Environmental management document requirements

Environmental management document may be required

608.(1) This section applies if a transitional authority is—

- (a) an environmental authority (exploration); or
- (b) an environmental authority (mineral development); or
- (c) an environmental authority (mining lease).

(2) During the transitional period, the administering authority may require the holder of the transitional authority to submit to it—

- (a) for an environmental authority (exploration) or an environmental authority (mineral development)—an environmental management plan that complies with the content requirements under section 189; or
- (b) for an environmental authority (mining lease)—an EMOS that complies with the content requirements under section 203.¹³⁴

(3) However, the requirement may be given to the holder only by a written notice—

- (a) stating the following—
 - (i) the holder's name;
 - (ii) the transitional authority;
 - (iii) the requirement;
 - (iv) a reasonable period of at least 28 days for the requirement to

¹³³ Chapter 5, part 12 (Amendment, cancellation or suspension by administering authority) or section 605 (Additional grounds for amendment by administering authority)

¹³⁴ Sections 189 (Environmental management plan—content requirements) and 203 (EMOS—content requirements)

be complied with; and

- (b) that is accompanied by, or includes, an information notice about the decision to make the requirement.

(4) An environmental management plan or EMOS submitted under this section is taken to be the environmental management document submitted for the transitional authority.

Consequence of failure to comply with requirement

609.(1) If a person fails to comply with an environmental document requirement for a transitional authority, section 293 applies for the transitional authority as if—

- (a) the failure was an event mentioned in section 293(2); and
- (b) the reference to cancellation or suspension in section 293(1) is a reference only to suspension.

(2) Subsection (1) does not prevent the administering authority deciding to amend the transitional authority under chapter 5, part 12.¹³⁵

Division 5—Transitional provisions other than for mining activities

Application of div 5

610. This division applies for an environmental authority, or an application for an environmental authority, under the existing Act, other than for a mining activity.

Unfinished applications under existing Act

611.(1) An application for a licence under chapter 3, part 4, of the existing Act that, immediately before the commencement day, has not been decided is taken on the commencement day to be an application for a licence

¹³⁵ Section 293 (Conditions)
Chapter 5, part 12 (Amendment, cancellation or suspension by administering authority)

Environmental Protection Act 1994

(without development approval) under chapter 4, part 3, division 2, subdivision 1.

(2) An application for a level 1 approval under chapter 3, part 4, of the existing Act that, immediately before the commencement day, has not been decided is taken on the commencement day to be a conversion application under chapter 4, part 4.

(3) An application for a licence under chapter 3, part 4A, of the existing Act that, immediately before the commencement day, has not been decided is taken on the commencement day to be an application for a licence (with development approval) under chapter 4, part 3, division 1.

(4) An application for a level 1 approval under chapter 3, part 4A, of the existing Act that, immediately before the commencement day, has not been decided is taken on the commencement day to be a conversion application under chapter 4, part 4.

(5) An application for a development approval under chapter 3, part 4B, of the existing Act that, immediately before the commencement day, has not been decided is taken on the commencement day to be an application to which chapter 4, part 2 applies.

(6) An application under chapter 3 of the existing Act to amend an environmental authority that, immediately before the commencement day, has not been decided is taken on the commencement day to be an amendment application under chapter 4, part 5.

(7) An application under chapter 3 of the existing Act to transfer an environmental authority that, immediately before the commencement day, has not been decided is taken on the commencement day to be a transfer application under chapter 4, part 6.¹³⁶

¹³⁶ Existing Act, chapter 3, parts 4 (Environmental authorities for environmentally relevant activities without development approvals), 4A (Environmental authorities for level 1 environmentally relevant activities with development approvals) and 4B (Development approvals for certain environmentally relevant activities).

Chapter 4, part 3, division 1 (Obtaining licence (with development approval) for level 1 environmentally relevant activity) and division 2, subdivision 1 (General provisions for obtaining licence)

Chapter 4, parts 2 (Development approvals), 4 (Conversion of licence to level 1 approval), 5 (Amending environmental authorities by application) and 6 (Dealings with licences)

Environmental authorities under existing Act

612.(1) A provisional licence in force under section 47¹³⁷ of the existing Act is taken on the commencement day to be a provisional licence issued on the same day as the day the provisional licence under section 47 was issued.

(2) A licence in force under the existing Act is taken on the commencement day to be a licence under this Act as amended by the amending Act.

(3) A level 1 approval in force under the existing Act is taken on the commencement day to be a level 1 approval under this Act as amended by the amending Act.

(4) A level 2 approval in force under the existing Act is taken on the commencement day to be a level 2 approval under this Act as amended by the amending Act.

(5) This section does not limit the *Environmental Protection Regulation 1998*, section 73.¹³⁸

Division 6—Miscellaneous provisions**Requirement to seek advice from MRA chief executive**

613. The requirement under section 302¹³⁹ applies for a decision by the Minister or the administering authority to amend an environmental authority (mining activities) under this part, unless the authority holder has agreed in writing to the amendment.

Existing Act continues to apply for special agreement Acts

614.(1) The existing Act continues to apply for an activity, circumstance, or matter provided for under, or to which, a special agreement Act applies

¹³⁷ Existing Act, section 47 (Provisional licence)

¹³⁸ *Environmental Protection Regulation 1998*, section 73 (Person taken to have authority to carry out activity)

¹³⁹ Section 302 (Requirement to seek advice with MRA chief executive)

as if the amending Act, other than for the insertion of section 584¹⁴⁰ and this section, had not been enacted.

(2) In this section—

“**special agreement Act**” means any of the following Acts and any agreement or lease under or mentioned in the Acts—

- (a) *Alcan Queensland Pty. Limited Agreement Act 1965*;
- (b) *Aurukun Associates Agreement Act 1975*;
- (c) *Central Queensland Coal Associates Agreement Act 1968*;
- (d) *Central Queensland Coal Associates Agreement and Queensland Coal Trust Act 1984*;
- (e) *Central Queensland Coal Associates Agreement (Amendment) Act 1986*;
- (f) *Central Queensland Coal Associates Agreement Amendment Act 1989*;
- (g) *Commonwealth Aluminium Corporation Pty. Limited Agreement Act 1957*;
- (h) *Greenvale Agreement Act Amendment Act 1974*;
- (i) *Greenvale Agreement Act Amendment Act 1975*;
- (j) *Mount Isa Mines Limited Agreement Act 1985*;
- (k) *Queensland Cement & Lime Company Limited Agreement Act 1977*;
- (l) *Queensland Nickel Agreement Act 1970*;
- (m) *Queensland Nickel Agreement Act 1988*;
- (n) *Thiess Peabody Coal Pty. Ltd. Agreement Act 1962*;
- (o) *Thiess Peabody Mitsui Coal Pty. Ltd. Agreements Act 1965*.

Transitional regulation-making power for pt 2

615.(1) A regulation (a “**transitional regulation**”) may make provision

¹⁴⁰ Section 584 (Definitions for pt 2)

about a matter for which—

- (a) it is necessary or convenient to make provision to allow or facilitate the doing of anything—
 - (i) to achieve the transition from the operation of the existing Act to the operation of this Act as amended by the amending Act; or
 - (ii) for a matter provided for under the Mineral Resources Act before the amending Act that, because of the amending Act, will be provided for under this Act; or
 - (iii) to effectively regulate the environmental impact of mining activities; and
 - (b) this Act does not make provision or sufficient provision.
- (2) A transitional regulation must declare it is a transitional regulation.
- (3) A transitional regulation expires on the earlier of the following—
- (a) 1 year after it is made;
 - (b) when the transitional period ends.
- (4) This section expires when the transitional period ends.

Validation

271.(1) To remove any doubt, it is declared that the Environmental Protection Regulation 1998, part 2A¹⁴¹ was, and is taken to have always been, validly made.

(2) This section expires the day after it commences.¹⁴²

Numbering and renumbering of Act

616.(1) In the next reprint of this Act, the provisions of this Act must be numbered and renumbered as permitted by the Reprints Act 1992,

¹⁴¹ *Environmental Protection Regulation 1998, part 2A (Environmental nuisance)*

¹⁴² This provision has expired and is included in this reprint for information only. It will be omitted in the next reprint. This provision has not been renumbered under section 616(1).

*section 43.*¹⁴³

(2) In the next reprint of any other Act or of any subordinate legislation, a reference to a provision of this Act must, if the context permits, be changed to agree with the numbering and renumbering.

(3) In an approved form or other document, a reference to a provision of the Act is, if the context permits, taken to be changed to agree with the numbering and renumbering.

¹⁴³ This subsection is included for information only.

SCHEDULE 1**ORIGINAL DECISIONS**

sections 519 and 522

**PART 1—ORIGINAL DECISIONS FOR TRIBUNAL
APPEALS***Division 1—Decisions under chapter 3*

Section	Description of decision
43(3)(c)	Decision about giving TOR notice
51(2)(a)(iii)	Decision about giving EIS notice
51(2)(b)(ii)	Decision about way of publishing EIS notice
68(1) and (2)	Decision not to allow EIS to proceed
68(3)(a)	Fixing of new notice period
68(3)(b)	Fixing of new comment or submission period.

Division 2—Decisions under chapter 5

Section	Description of decision
193(1)	Refusal of application for environmental authority (exploration) or environmental authority (mineral development)
193(2)	Imposition of conditions of environmental authority (exploration) or environmental authority (mineral development)

SCHEDULE 1 (continued)

207(1)	Refusal of environmental authority (mining lease) application (for a non-standard application only)
211(3)	Decision to require another way of publishing application notice
215(1) and (2)	Decision not to allow application to proceed
271(2)	Decision to give surrender notice
271(2)	Fixing of period for compliance with surrender notice
277	Refusal of surrender application.

Division 3—Decisions under chapter 7

Section	Description of decision
366	Refusal to amend or discharge a financial assurance for an environmental authority (mining activities).

Division 4—Decisions under chapter 12, part 3

Section	Description of decision
566	Refusal of disclosure exemption application
568	Grant of disclosure exemption application for only part of the information the subject of the application or for a stated period.

SCHEDULE 1 (continued)

**PART 2—ORIGINAL DECISIONS FOR COURT
APPEALS***Division 1—Decisions under chapter 4*

Section	Description of decision
83	Refusal of application for licence (with development approval) application
85(1)	Imposition of licence condition
90	Grant or refusal of licence (without development approval)
92(1)	Imposition of licence condition
94(2)	Issue of provisional licence
94(4)	Imposition of provisional licence condition
101	Refusal of level 2 approval (with development approval) application
103(1)	Imposition of level 2 approval condition
110	Refusal of conversion application
112(3)	Imposition of another condition on level 1 approval
34DK(2)	Decision to make public notice requirement for amendment application
118	Grant or refusal of amendment application
126	Refusal of transfer application
135(1)	Proposed action decision
145(2)	Refusal to extend period personal representative is taken to be environmental authority holder.

SCHEDULE 1 (continued)

Division 2—Decisions under chapter 5

Section	Description of decision
254(2)(b)(ii)	Decision to require another way of publishing notice of amendment application
257(1)	Refusal of amendment application
262(1)	Refusal of transfer application
280(1)	Decision to give audit notice
280(1) and (3)(d)	Fixing of period for conducting or commissioning environmental audit and giving environmental audit report
283(1)	Decision to conduct or commission an environmental audit or prepare an environmental audit report
297(1)	Proposed action decision, other than a decision to amend a standard environmental authority (mining activities).

Division 3—Decisions under chapter 7

Section	Description of decision
322(1)	Requirement for environmental audit
323(1)	Requirement for environmental investigation
326(4)	Requirement for additional information about an environmental evaluation
328(1)	Extension of time for decision on submission of environmental report
332(1) or (2)	Requirement for draft environmental management program

SCHEDULE 1 (continued)

- | | |
|----------------|--|
| 337(1) or 344 | Decision on whether to approve, or to approve an amendment of an approval of, a draft environmental management program |
| 339(3) | Imposition of conditions on an environmental management program approval |
| 340 | Refusal to approve draft environmental management program |
| 341(1) | Extension of time for decision on submission of draft environmental management program |
| 353(3)(a) | Removal of immunity from prosecution for a person under a refusal to approve a draft environmental management program |
| 358 | Issue of environmental protection order |
| 366(6) | Refusal to amend or discharge a financial assurance, other than for an environmental authority (mining activities) |
| 367(2) | Claim on, or realisation of, financial assurance |
| 369(3) | Refusal to grant an application for an approval |
| 369(5) and (6) | Imposition of conditions on an approval |
| 369(6) | Revocation, or varying conditions, of an approval |
| 374(1) | Decision whether land has been, or is being, used for a notifiable activity or is contaminated land |
| 376(2) | Requirement for site investigation |
| 378(3) | Refusal of application for waiver of requirement to conduct or commission site investigation and report |
| 384(1) | Decision whether land is contaminated land |
| 384(2) | Decision about particulars of land in contaminated land register |
| 385(2) | Requirement for further information about site investigation and report |

SCHEDULE 1 (continued)

- 388(1) Extension of time to make decision about site investigation report
- 391(1) Requirement to conduct or commission work to remediate contaminated land
- 392(3) Refusal of application for waiver of requirement to conduct or commission work to remediate contaminated land
- 396(1) Decision whether land is still contaminated land
- 398(2) Requirement for additional information about validation report
- 399(1) Extension of time for consideration of validation report
- 405(2)(a) Decision to prepare site management plan
- 405(2)(b) or
411(1) Requirement to prepare or commission site management plan
- 407(3) Refusal of application for waiver of requirement to prepare or commission site management plan
- 411(2)(a) Requirement for additional information about site management plan
- 412 Decision on whether to approve draft site management plan
- 415(1) Extension of time for decision about approval of draft site management plan
- 419(2)(a) Decision to prepare an amendment of a site management plan
- 419(2)(b) Requirement for preparation and submission of draft amendment of site management plan
- 423(1) Erection of sign on contaminated land for which particulars are not recorded on the environmental management register or contaminated land register
- 424(3) Refusal of disposal permit application

SCHEDULE 1 (continued)

424(3) and (4)	Imposition of conditions on disposal permit
451(1)	Requirement for information relevant to the administration or enforcement of this Act.

Division 4—Decisions under chapter 12, part 2

Section	Description of decision
555(2)	Extension of period for deciding application relating to environmental authority or EMP submission
556(1)(a)	Requirement for additional information about an application or EMP submission.

Division 5—Decisions under chapter 13

Section	Description of decision
596(2)	Decision to give reminder notice
596(2)	Fixing of period for compliance with reminder notice
607(4)	Decision about consolidating transitional authorities for same mining project
608(2)	Decision to make environmental document requirement for transitional authority.

SCHEDULE 2**NOTIFIABLE ACTIVITIES**

schedule 3, dictionary, definition “**notifiable activity**”

1. Abrasive blasting—carrying out abrasive blast cleaning (other than cleaning carried out in fully enclosed booths) or disposing of abrasive blasting material.
2. Aerial spraying—operating premises used for—
 - (a) filling and washing out tanks used for aerial spraying; or
 - (b) washing aircraft used for aerial spraying.
3. Asbestos manufacture or disposal—
 - (a) manufacturing asbestos products; or
 - (b) disposing of unbonded asbestos; or
 - (c) disposing of more than 5 t of bonded asbestos.
4. Asphalt or bitumen manufacture—manufacturing asphalt or bitumen, other than at a single-use site used by a mobile asphalt plant.
5. Battery manufacture or recycling—assembling, disassembling, manufacturing or recycling batteries (other than storing batteries for retail sale).
6. Chemical manufacture or formulation—manufacturing, blending, mixing or formulating chemicals if—
 - (a) the chemicals are designated dangerous goods under the dangerous goods code; and
 - (b) the facility used to manufacture, blend, mix or formulate the chemicals has a design production capacity of more than 1 t per week.

SCHEDULE 2 (continued)

7. Chemical storage (other than petroleum products or oil under item 29)—storing more than 10 t of chemicals (other than compressed or liquefied gases) that are dangerous goods under the dangerous goods code.
8. Coal fired power station—operating a coal fired power station.
9. Coal gas works—operating a coal gas works.
10. Defence establishments or training areas—operating a defence establishment or a training area used for handling ammunition in a way that may have caused, or may cause, remnant unexploded ordnance.
11. Drum reconditioning or recycling—reconditioning or recycling of metal or plastic drums including storage drums.
12. Dry cleaning—operating a dry cleaning business where—
 - (a) solvents are stored in underground tanks; or
 - (b) more than 500 L of halogenated hydrocarbon are stored.
13. Electrical transformers—manufacturing, repairing or disposing of electrical transformers.
14. Engine reconditioning works—carrying out engine reconditioning work at a place where more than 500 L of any of the following are stored—
 - (a) halogenated and non-halogenated hydrocarbon solvents;
 - (b) dangerous goods in class 6.1 under the dangerous goods code;
 - (c) industrial degreasing solutions.
15. Explosives production or storage—operating an explosives factory under the *Explosives Act 1999*.
16. Fertiliser manufacture—manufacturing agriculture fertiliser (other than the blending, formulation or mixing of fertiliser).
17. Foundry operations—commercial production of metal products by injecting or pouring molten metal into moulds and associated activities in works having a design capacity of more than 10 t per year.
18. Gun, pistol or rifle range—operating a gun, pistol or rifle range.

SCHEDULE 2 (continued)

19. Herbicide or pesticide manufacture—commercially manufacturing, blending, mixing or formulating herbicides or pesticides.
20. Landfill—disposing of waste (excluding inert construction and demolition waste).
21. Lime burner—manufacturing cement or lime from limestone material using a kiln and storing wastes from the manufacturing process.
22. Livestock dip or spray race operations—operating a livestock dip or spray race facility.
23. Metal treatment or coating—treating or coating metal including, for example, anodising, galvanising, pickling, electroplating, heat treatment using cyanide compounds and spray painting using more than 5 L of paint per week (other than spray painting within a fully enclosed booth).
24. Mine wastes—
 - (a) storing hazardous mine or exploration wastes, including, for example, tailings dams, overburden or waste rock dumps containing hazardous contaminants; or
 - (b) exploring for, or mining or processing, minerals in a way that exposes faces, or releases groundwater, containing hazardous contaminants.
25. Mineral processing—chemically or physically extracting or processing metalliferous ores.
26. Paint manufacture or formulation—manufacturing or formulating paint where the design capacity of the plant used to manufacture or formulate the paint is more than 10 t per year.
27. Pest control—commercially operating premises, other than premises operated for farming crops or stock, where—
 - (a) more than 200 L of pesticide are stored; and
 - (b) filling or washing of tanks used in pest control operations occurs.

SCHEDULE 2 (continued)

- 28.** Petroleum or petrochemical industries including—
- (a) operating a petrol depot, terminal or refinery; or
 - (b) operating a facility for the recovery, reprocessing or recycling of petroleum-based materials.
- 29.** Petroleum product or oil storage—storing petroleum products or oil—
- (a) in underground tanks with more than 200 L capacity; or
 - (b) in above ground tanks with—
 - (i) for petroleum products or oil in class 3 in packaging groups 1 and 2 of the dangerous goods code—more than 2 500 L capacity; or
 - (ii) for petroleum products or oil in class 3 in packaging groups 3 of the dangerous goods code—more than 5 000 L capacity; or
 - (iii) for petroleum products that are combustible liquids in class C1 or C2 in Australian Standard AS 1940, ‘The storage and handling of flammable and combustible liquids’ published by Standards Australia—more than 25 000 L capacity.
- 30.** Pharmaceutical manufacture—commercially manufacturing, blending, mixing or formulating pharmaceuticals.
- 31.** Printing—commercial printing using—
- (a) type metal alloys; or
 - (b) printing inks or pigments or etching solutions containing metal; or
 - (c) cast lead drum plates; or
 - (d) a linotype machine with a gas-fired lead melting pot attached; or
 - (e) more than 500 L of halogenated and non-halogenated hydrocarbon solvents.
- 32.** Railway yards—operating a railway yard including goods-handling yards, workshops and maintenance areas.

SCHEDULE 2 (continued)

33. Scrap yards—operating a scrap yard including automotive dismantling or wrecking yard or scrap metal yard.
34. Service stations—operating a commercial service station.
35. Smelting or refining—fusing or melting metalliferous metal or refining the metal.
36. Tannery, fellmongery or hide curing—operating a tannery or fellmongery or hide curing works or commercially finishing leather.
37. Waste storage, treatment or disposal—storing, treating, reprocessing or disposing of waste prescribed under a regulation to be regulated waste for this item (other than at the place it is generated), including operating a nightsoil disposal site or sewage treatment plant where the site or plant has a design capacity that is more than the equivalent of 50 000 persons having sludge drying beds or on-site disposal facilities.
38. Wood treatment and preservation—treating timber for its preservation using chemicals, including, for example, arsenic, borax, chromium, copper or creosote.

SCHEDULE 3**DICTIONARY**

section 7

“additional condition”, for an application for or about a standard environmental authority (mining activities), means a condition other than a relevant standard environmental condition.

“administering authority” means—

- (a) for a matter, the administration and enforcement of which has been devolved to a local government under section 514—the local government; or
- (b) for another matter—the chief executive.

“administering executive” means—

- (a) for a matter, the administration and enforcement of which has been devolved to a local government under section 514—the local government’s chief executive officer; or
- (b) for another matter—the chief executive.

“advice agency”, for a development application, has the meaning given by the Integrated Planning Act.

“affected person”, for a project, see section 38.

“amendment application” for—

- (a) chapter 4—see section 116; or
- (b) chapter 5—see section 238.

“anniversary day”, for an environmental authority means the anniversary of the day the authority is issued, whether or not it has been amended or transferred.¹⁴⁴

¹⁴⁴ See, however, section 602 (Anniversary day for certain transitional authorities).

SCHEDULE 3 (continued)

“**annual notice**” see section 316(2).

“**applicant**” for chapter 12, part 2, see section 551.

“**applicants**” for chapter 5, part 9, see section 260(1)(b)

“**application date**” see section 552.

“**application documents**”, for chapter 5, see section 150.

“**application notice**”, for—

(b) chapter 4, part 3, division 2, subdivision 1—see section 34CC(1)(a);¹⁴⁵ or

(b) chapter 5, part 6—see section 211.

“**application requirements**”, for chapter 5, see section 154(5).

“**appropriately qualified**”, for a person to whom a power under this Act may be delegated, includes having the qualifications, experience or standing appropriate to exercise the power.

Example of ‘standing’—

A person’s classification level in the public service.

“**approval**” means an approval under chapter 7, part 4 or 4A to carry out a level 1 or level 2 environmentally relevant activity.¹⁴⁶

“**approved code of practice**” means a code of practice approved by the Minister under section 548.

“**approved form**” means a form approved by the administering executive.

“**assessable development**” means assessable development as defined under the Integrated Planning Act.

“**assessment level decision**”—

(a) generally, means—

(i) the assessment level decision under section 161(1); or

¹⁴⁵ Section 34CC (Public notice of application) had not commenced at the time of this reprint.

¹⁴⁶ Part 4 and part 4A were omitted by Act No. 64 of 2000.

SCHEDULE 3 (continued)

- (ii) if the EPA Minister has made the assessment level decision under section 165(2)—that decision; or
- (b) for chapter 5, part 8—
 - (i) the assessment level decision under section 246(1)(a) and (3); or
 - (ii) if the EPA Minister has made the assessment level decision under section 247(2)—that decision.

“assessment manager” has the meaning given by section 3.1.7 of the Integrated Planning Act.

“assessment period” for—

- (a) chapter 5, part 5, division 3—see section 191(2); or
- (b) chapter 5, part 6, division 3—see section 205(2).

“audit notice” see section 280(1).

“auditor” means an individual who holds an appointment as an auditor under section 285.

“authorised person” means a person holding office as an authorised person under an appointment under this Act by the chief executive or chief executive officer of a local government.

“best practice environmental management”, for an activity, see section 21.

“bilateral agreement” means a bilateral agreement as defined under the Commonwealth Environment Act to which the State is a party.

“boat” means a boat, ship or other vessel of any size or kind, and includes a hovercraft.

“business”, of a holder of an environmental authority, means the business of carrying out the environmentally relevant activity the subject of the authority.

“business days”, for chapter 3, part 1, see section 39.

“code of environmental compliance” means a code of environmental compliance approved or made under a regulation.

SCHEDULE 3 (continued)

“**comment period**”, for chapter 3, part 1, see section 39.

“**Commonwealth Environment Act**” means the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth).

“**concurrence agency**”, for a development application, has the meaning given by the Integrated Planning Act.

“**conditions**”, for an environmental authority, includes a condition of an environmental authority that has ended or ceased to have effect if the condition imposed an obligation that continues to apply after the authority has ended or ceased to have effect.

“**contaminant**” see section 11.

“**contaminated land**” means land contaminated by a hazardous contaminant.

“**contaminated land register**” means the register kept by the administering authority under section 540(1)(e)(ii).

“**contamination**” see section 10.

“**continuation**”, for an original offence under a program notice, includes the happening again of the offence because of a relevant event of the same type stated in the notice.

“**conversion application**”, for chapter 4, part 4, see section 108.

“**conviction**” includes a plea of guilty or a finding of guilt by a court even though a conviction is not recorded.

“**correction**”, for—

- (a) chapter 4, part 7—see section 129; or
- (b) chapter 5, part 12—see section 290.

“**corresponding law**” means under a law of the Commonwealth or another State that provides for the same or similar matters as this Act.

“**Court**” means the Planning and Environment Court.

“**current objection**”, for an application, means an objection to the application that—

- (a) the administering authority has accepted; and

SCHEDULE 3 (continued)

(b) has not been withdrawn.

“dangerous goods code” means the Australian Code for the Transport of Dangerous Goods by Road and Rail prepared by the Office of Federal Road Safety and published by the Commonwealth.

“deciding”, for an application or submission, for chapter 12, part 2, see section 551.

“development” has the meaning given by section 1.3.2 of the Integrated Planning Act.

“development application” means an application for a development approval.

“development approval” means development approval as defined under the Integrated Planning Act.

“development condition”, of a development approval, means a condition of the approval imposed by, or imposed because of a requirement of, the administering authority as assessment manager or concurrence agency for the application for the approval.

“development offence” means an offence against section 435.

“disclosure exemption” see section 564.

“disposal permit” means a permit under section 424 to remove and treat or dispose of contaminated soil from land for which particulars are recorded in the environmental management register or contaminated land register.

“disqualifying event” means—

- (a) a conviction for an environmental offence; or
- (b) the cancellation or suspension of—
 - (i) an environmental authority; or
 - (ii) an authority, instrument, licence or permit, however called, similar to an environmental authority under a corresponding law.

“dissatisfied person” see section 520.

SCHEDULE 3 (continued)

“draft environmental authority”, for an environmental authority (mining activities) application, means the draft environmental authority for the application prepared by the administering authority under chapter 4, part 4, division 3 or part 6, division 5.

“draft terms of reference”, for an EIS, see section 39.

“ecologically sustainable development” see section 3.

“EIS” means an environmental impact statement.

“EIS amendment notice” see section 66(3).

“EIS assessment report” see section 57.

“EIS decision”, for chapter 5, part 8, means—

- (a) the EIS decision under section 246(1)(b) and (4); or
- (b) if the EPA Minister has made a decision under section 247(3)—that decision.

“EIS notice” see section 51(2)(a).

“EIS process”, for an EIS, means the process for the EIS under chapter 3, part 1.

“EIS requirement”, for an application, means that an EIS has been required under this Act for the application.

“emergency direction” see section 468.

“emergency powers” see section 467(6).

“EMOS” means an environmental management overview strategy.

“EMOS amendment notice”, for chapter 5, see section 204(3).

“EMOS assessment report”, for chapter 5, part 6, see section 205(1).

“EM plan assessment report”, for chapter 5, part 5, see section 191(1).

“EMP submission”, for chapter 12, part 2, see section 551.

“enforcement order” see section 507.

“engaging” in conduct includes failing to engage in conduct.

“enter”, a place, includes re-enter the place.

SCHEDULE 3 (continued)

“entry order”, for chapter 12, part 4, see section 575(2).

“environment” see section 8.

“environmental audit” for chapter 7, part 2, see section 322.

“environmental authority” means an environmental authority under chapter 4 or 5.

“environmental authority (exploration)” see section 148(c).

“environmental authority (mineral development)” see section 148(d).

“environmental authority (mining activities)” see section 146(2).

“environmental authority (mining claim)” see section 148(b).

“environmental authority (mining lease)” see section 148(e).

“environmental authority (prospecting)” see section 148(a).

“environmental evaluation” means an environmental audit or investigation.

“environmental harm” see section 14.

“environmental investigation” see section 323.

“environmentally relevant activity” see section 18.

“environmental management document” means an environmental management plan or an EMOS.

“environmental management plan”, for chapter 3, part 1, see section 39.

“environmental management program” means an environmental management program approved under chapter 7, part 3.

“environmental management register” means the register kept by the administering authority under section 540(1)(e)(i).

“environmental nuisance” see section 15.

“environmental offence” means—

- (a) an offence against any of the following provisions—
- section 236(3)
 - section 322

SCHEDULE 3 (continued)

- section 323
 - section 357(5)
 - section 361
 - chapter 5, parts 10 and 11
 - chapter 8; or
- (b) an offence against a corresponding law, if the act or omission that constitutes the offence would, if it happens in the State, be an offence against a provision mentioned in paragraph (a).

“environmental protection commitment”, for an environmental management document, means—

- (a) a commitment under, or stated in, the document; or
- (b) an obligation imposed, or an undertaking given, under the document; or
- (c) a requirement under the document to produce a stated outcome.

“environmental protection order” see section 467.

“environmental protection policy” means an environmental protection policy approved under chapter 2.

“environmental report” means a report on an environmental evaluation.

“environmental requirement” means—

- (a) an environmental authority; or
- (b) an environmental management program; or
- (c) a site management plan.

“environmental value” see section 9.

“EPA Minister” means the Minister for the time being administering this Act.

“EPP requirement” means a requirement under an environmental protection policy for the administering authority to—

- (a) follow stated procedure in evaluating an environmental authority application; or

SCHEDULE 3 (continued)

- (b) grant or refuse an environmental authority application or impose a condition on an environmental authority.

“executive officer”, of a corporation, means—

- (a) if the corporation is the Commonwealth or a State—a chief executive of a department of government or a person who is concerned with, or takes part in, the management of a department of government, whatever the person’s position is called; or
- (b) if the corporation is a local government—
- (i) the chief executive officer of the local government; or
- (ii) a person who is concerned with, or takes part in, the local government’s management, whatever the person’s position is called; or
- (c) if paragraphs (a) and (b) do not apply—a person who is—
- (i) a member of the governing body of the corporation; or
- (ii) concerned with, or takes part in, the corporation’s management;

whatever the person’s position is called and whether or not the person is a director of the corporation.

“exempted material”, for chapter 12, part 3, division 2, see section 511.

“exploration permit” means—

- (a) an exploration permit under the Mineral Resources Act; or
- (b) a former exploration permit under the Mineral Resources Act continued in effect under section 148 of that Act.

“fee” includes tax.

“final rehabilitation report” means a final rehabilitation report prepared under chapter 5, part 10, division 2, subdivision 2.

“final terms of reference”, for chapter 3, part 1, see section 39.

“FRR amendment notice”, for chapter 5, see section 275(3).

“FRR assessment report”, for chapter 5, see section 276.

SCHEDULE 3 (continued)

“**general environmental duty**” see section 319.

“**hazardous contaminant**” means a contaminant, other than unexploded ordnance, that, if improperly treated, stored, disposed of or otherwise managed, is likely to cause serious or material environmental harm because of—

- (a) its quantity, concentration, acute or chronic toxic effects, carcinogenicity, teratogenicity, mutagenicity, corrosiveness, explosiveness, radioactivity or flammability; or
- (b) its physical, chemical or infectious characteristics.

“**holder**”, for a mining tenement, means a holder of the tenement under the Mineral Resources Act.

“**hovercraft**” means a vehicle designed to be supported on cushion of air.

“**identity card**”, of an authorised person, means the identity card issued to the authorised person under section 448.

“**IEMS submission**” see section 312(2)(a).

“**information notice**”, about a decision, means a written notice stating—

- (a) the decision; and
- (b) if the decision is a decision other than to impose a condition on an environmental authority, the reasons for the decision; and
- (c) the review or appeal details.

“**integrated authority**” see section 311(4).

“**integrated environmental management system**”, for an environmentally relevant activity or activities, means a system for the management of the environmental impacts of the carrying out of the activity or activities.

“**Integrated Planning Act**” means the *Integrated Planning Act 1997*.

“**interested person**”, for chapter 3, part 1, see section 39.

“**interim enforcement order**” see section 507.

“**joint applicants**”, for chapter 5, part 2, division 2, subdivision 3, see section 157.

SCHEDULE 3 (continued)

“joint application”, for chapter 5, part 2, division 2, subdivision 3, see section 158(1).

“land” includes—

- (a) the airspace above land; and
- (b) land that is, or is at any time, covered by waters; and
- (c) waters.

“level 1 approval” see section 74(1)(c).

“level 1 approval (with development approval)” see section 74(3)(a).

“level 1 approval (without development approval)” see section 74(3)(b).

“level 1 environmentally relevant activity” means a level 1 environmentally relevant activity under section 20(3).

“level 2 approval” see section 74(1)(d).

“level 2 environmentally relevant activity” means a level 2 environmentally relevant activity under section 20(2).

“licence” means a licence under section 74, including a provisional licence.

“licence (with development approval)” see section 74(2)(a).

“licence (without development approval)” see section 74(2)(b).

“licensed place” means a place, or the part of a place, to which an environmental authority relates, but does not include premises, or the part of premises, used only for residential purposes.

“material environmental harm” see section 16.

“mineral development licence” means—

- (a) a mineral development licence under the Mineral Resources Act; or
- (b) a former mineral development licence under the Mineral Resources Act continued in effect under section 215 of that Act.

“Mineral Resources Act” means the *Mineral Resources Act 1989*.

“mining activity” see section 147.

SCHEDULE 3 (continued)

“mining claim” means a mining claim under the Mineral Resources Act.

“mining lease” means a mining lease under the Mineral Resources Act.

“mining project” see section 149.

“mining registrar”, for an application or a mining tenement, means the mining registrar under the Mineral Resources Act for the district under that Act for the land to which the application or tenement relates.

“mining tenement” means a prospecting permit, mining claim, exploration permit, mineral development licence or mining lease.

“Minister’s decision” for chapter 5, part 6, division 7, subdivision 1, see section 225(1).

“missing information”, for a provisional licence, see section 94(5).

“MRA Minister” means the Minister for the time being administering the Mineral Resources Act.

“national environmental protection measure” means a national environmental protection measure made under the national scheme laws.

“national scheme laws” means—

- (a) the *National Environment Protection Council Act 1994* (Cwlth); and
- (b) the *National Environment Protection Council (Queensland) Act 1994*.

“National Strategy for Ecologically Sustainable Development” means the National Strategy for Ecologically Sustainable Development endorsed by the Council of Australian Governments on 7 December 1992.

“noise” see section 12.

“non-standard application” means an application for an environmental authority (mining activities) decided, or taken to have been decided, to be a non-standard application under chapter 5, part 2, division 3.

“non-standard environmental authority (mining activities)” means an environmental authority (mining activities) that is not for a standard

SCHEDULE 3 (continued)

mining activity.

“notifiable activity” means an activity in schedule 3.

“objection period”, for chapter 5, means—

- (a) the objection period under section 212; or
- (b) if section 215 applies—any new objection fixed under section 215(3)(b)(ii).

“objections decision”, for chapter 5, see section 219(1).

“objector”, for an application, means an entity that makes a properly made objection about the application whose objection has not been withdrawn.

“obstruct” includes hinder, resist and attempt to obstruct.

“occupier”, of a place, includes the person apparently in charge of the place.

“operational land”, for chapter 3, part 1, see section 39.

“original decision” see section 519.

“original offence”, for a program notice, see section 351.

“owner”—

1. The **“owner”** of land is—

- (a) for freehold land—the person recorded in the freehold land register as the person entitled to the fee simple interest in the land; or
- (b) for land held under a lease, licence or permit under an Act—the person who holds the lease, licence or permit; or
- (c) for trust land under the *Land Act 1994*—the trustees of the land; or
- (d) for Aboriginal land under the *Aboriginal Land Act 1991*—the persons to whom the land has been transferred or granted; or
- (e) for Torres Strait Islander land under the *Torres Strait Islander Land Act 1991*—the persons to whom the land has been transferred or granted; or

SCHEDULE 3 (continued)

- (f) for land for which there is a native title holder under the Commonwealth Native Title Act—each registered native title party in relation to the land.

2. Also, a mortgagee of land is the owner of the land if—

- (a) the mortgagee is acting as a mortgagee in possession of the land and has the exclusive management and control of the land; or
- (b) the mortgagee, or a person appointed by the mortgagee, is in possession of the land and has the exclusive management and control of the land.

“ozone depleting substance” means—

- (a) any chlorofluorocarbon or halon; or
- (b) another substance prescribed by regulation to be an ozone depleting substance.

“person”, for—

- (a) chapter 3, part 1—see section 39; or
- (b) chapter 4, part 3, division 2, subdivision 1—see section 88.

“person in control”, of a vehicle, includes—

- (a) the driver of the vehicle; and
- (b) the person in command of the vehicle; and
- (c) the person who appears to be in control or command of the vehicle.

“preliminary investigation”, for land, means an investigation to find out whether the land is contaminated land.

“premises” includes—

- (a) a building or structure, or part of a building or structure, of any kind; and
- (b) the land on which a building or structure is situated.

“program notice” see section 350.

“properly made objection” see section 217(2).

SCHEDULE 3 (continued)

“properly made submission”, for—

- (a) chapter 3—see section 55(2); or
- (b) chapter 4, part 3, division 2, subdivision 1—see section 34CH(2).¹⁴⁷

“proponent”, for chapter 3, part 1, see section 39.

“proposed action”, for—

- (a) chapter 4, part 7, division 2—see section 133(1)(a); or
- (b) chapter 5, part 12, division 2—see section 295(1)(a).

“proposed action decision”, for—

- (a) chapter 4, part 7, division 2—see 135(2); or
- (b) chapter 5—see section 297(2).

“proposed holder” means—

- (a) for an application for an environmental authority, any applicant for the environmental authority; or
- (b) for an application to transfer an environmental authority, the proposed transferee.

“proposed transferee”, for chapter 4, part 6, see section 123(1).

“prospecting permit” means—

- (a) a prospecting permit under the Mineral Resources Act; or
- (b) a former prospecting permit under the Mineral Resources Act continued in effect under section 30 of that Act.

“provisional licence” see section 74(1)(b).

“public authority” includes an entity established under an Act and a government owned corporation under the *Government Owned Corporations Act 1993*.

¹⁴⁷ Section 34CH (Acceptance of submissions) had not commenced at the time of this reprint.

SCHEDULE 3 (continued)

“public notice requirement”, for chapter 4, part 5, see section 34DK(2).¹⁴⁸

“public notice requirements”, for chapter 5, part 6—see section 214(1).

“public place” means any place the public is entitled to use or is open to, or used by, the public (whether or not on payment of an admission fee).

“recipient” means—

- (a) for an environmental evaluation—the person on whom the requirement for the evaluation is made; or
- (b) for an environmental protection order—the person to whom the order is issued; or
- (c) for a notice to conduct or commission a site investigation—the person to whom the notice is given; or
- (d) for a remediation notice—the person to whom the notice is given; or
- (e) for a notice to prepare or commission a site investigation report—the person to whom the notice is given.

“referral agency” means an advice agency or concurrence agency.

“refusal period”, for—

- (a) for chapter 5, part 4—see section 173(1); or
- (b) for chapter 5, part 6—see section 207(1).

“register” means a register kept under section 540.

“registrar” means the registrar of titles or another person responsible for keeping a register in relation to dealings in land.

“release”, of a contaminant into the environment, includes—

- (a) to deposit, discharge, emit or disturb the contaminant; and
- (b) to cause or allow the contaminant to be deposited, discharged emitted or disturbed; and

¹⁴⁸ Section 34DK (Public notice may be required for licence amendment) had not commenced at the time of this reprint.

SCHEDULE 3 (continued)

- (c) to fail to prevent the contaminant from being deposited, discharged, emitted or disturbed; and
- (d) to allow the contaminant to escape; and
- (e) to fail to prevent the contaminant from escaping.

“relevant event”, for a program notice, see section 350(1).

“relevant local government”, for land, means the local government for the local government area where the land is situated.

“relevant matters”, for an environmental evaluation, means the matters to be addressed by the evaluation.

“relevant mining activity”, for—

- (a) an application for or about an environmental authority (mining activities)—means a mining activity the subject of the application; or
- (b) an environmental authority (mining activities)—means a mining activity the subject of the authority.

“relevant mining lease”, for an environmental authority (mining lease) means a mining lease, or proposed mining lease, to which the relevant mining activity for the authority relates.

“relevant mining tenement”, for an environmental authority (mining activities) or an environmental authority (mining activities) application, means a mining tenement, or proposed mining tenement, to which a relevant mining activity relates.

“relevant standard environmental conditions”, for an environmental authority (mining activities), or proposed environmental authority (mining activities), means the standard environmental conditions applying to the activities the subject of the authority

“remediate”, contaminated land, means—

- (a) rehabilitate the land; or
- (b) restore the land; or

SCHEDULE 3 (continued)

- (c) take other action to prevent or minimise serious environmental harm being caused by the hazardous contaminant contaminating the land.

“remediation notice” see section 391(5)(a).

“replacement environmental authority”, for an environmental authority, means another environmental authority that is the same, substantially the same or replaces the environmental authority.

“representative”, of a person, means—

- (a) if the person is a corporation—an executive officer, employee or agent of the corporation; or
- (b) if the person is an individual—an employee or agent of the individual.

“review or appeal details”, for a notice or order, means a statement in the notice or order as follows—

- (a) that a person as follows may apply for a review of, or appeal against, the decision to which the notice or order relates—
 - (i) the person given the notice or order;
 - (ii) another dissatisfied person for the original decision to which the notice or order relates;
- (b) about whether the person may apply for a review or may appeal against the decision;
- (c) about the period or time allowed for making the application for a review or for starting an appeal;
- (d) if the person may apply for a review—about how to apply for a review;
- (e) if the person may appeal—about how to start an appeal.

“review date” see section 521(2)(a)(i).

“review decision” see section 521(5)(c).

“sanitary convenience” means a urinal, water-closet, earth closet, cesspit, cesspool or other receptacle for human waste.

SCHEDULE 3 (continued)

“**security**” includes bond, deposit of an amount as security, guarantee, indemnity or other surety, insurance, mortgage and undertaking.

“**schedule 8 development**” means development prescribed under a regulation under this Act for schedule 8, part 1, section 6 of the Integrated Planning Act.

“**serious environmental harm**” see section 17.

“**site investigation report**” means a report submitted to the administering authority about a site investigation of land for which particulars are recorded in the environmental management register.

“**site management plan**” means a site management plan approved under chapter 7, part 8.

“**standard application**” means an application for an environmental authority (mining activities) decided, or taken to have been decided, to be a standard application under chapter 5, part 2, division 3.

“**standard criteria**”, for an environmental authority, management program, protection order or removal permit, means—

- (a) the principles of ecologically sustainable development as set out in the National Strategy for Ecologically Sustainable Development; and
- (b) any applicable environmental protection policy; and
- (c) any applicable Commonwealth, State or local government plans, standards, agreements or requirements; and
- (d) any applicable environmental impact study, assessment or report; and
- (e) the character, resilience and values of the receiving environment; and
- (f) all submissions made by the applicant and submitters; and
- (g) the best practice environmental management for the activity under the authority, program, order or permit; and

SCHEDULE 3 (continued)

- (h) the financial implications of the requirements of the authority, program, order or permit as they would relate to the type of activity or industry carried on under the authority, program or order; and
- (i) the public interest; and
- (j) any applicable site management plan; and
- (k) for an environmental authority—any integrated environmental management system for the authority; and
- (l) any other matter prescribed under a regulation.

“standard environmental authority (mining activities)” means an environmental authority (mining activities) that is only for a standard mining activity.

“standard environmental conditions”, for an environmental authority, means the standard environmental conditions approved for the authority under section 549.

“standard mining activity” means a mining activity or proposed mining activity decided to be a standard mining activity under section 151.

“State Development Act” means the *State Development and Public Works Organisation Act 1971*.

“state of mind”, of a person, includes—

- (a) the person’s knowledge, intention, opinion, belief or purpose; and
- (b) the person’s reasons for the intention, opinion, belief or purpose.

“submission period”, for—

- (a) chapter 3, part 1—see section 39; or
- (b) chapter 4, part 3, division 3, subdivision 1—see section 88.¹⁴⁹

“submitted EMOS”, for chapter 5, see section 201(1).

¹⁴⁹ The reference to this definition in section 88 (Definitions for sdiv 1) has not yet commenced.

SCHEDULE 3 (continued)

“**submitter**”, for an application, means a person who makes a properly made submission about the application.

“**suitability report**” see section 560(1).

“**suitability statement**”, for land, means a statement about the uses and activities for which the land is suitable.

“**surrender application**” see section 268(1)(a).

“**surrender notice**” see section 271(2).

“**TOR notice**” see section 42(1).

“**transfer application**” for—

(a) chapter 4—see section 124(a).

(b) chapter 5—see section 259(1)(a).

“**tribunal**” means the Land and Resources Tribunal.

“**unlawful environmental harm**” means environmental harm that is unlawful under section 436(1).

“**validation report**” see section 390.

“**vehicle**” includes a train, boat and an aircraft.

“**waste**” see section 13.

“**waste management works**” see section 368.

“**waters**” means Queensland waters.

“**wilfully**” means—

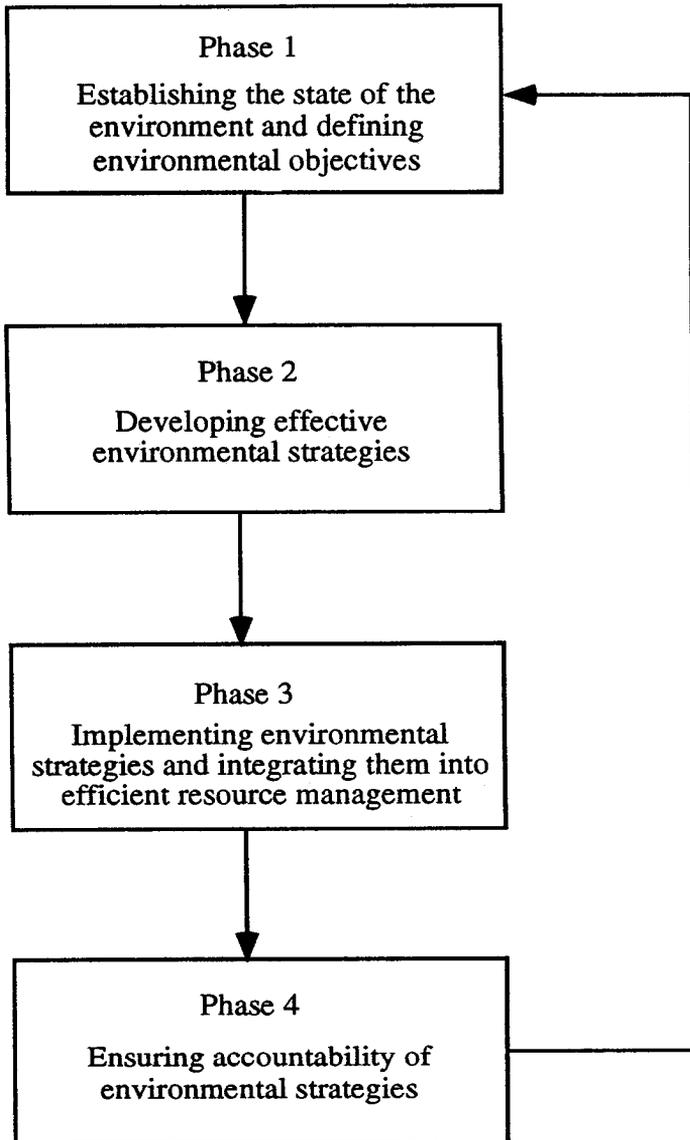
(a) intentionally; or

(b) recklessly; or

(c) with gross negligence.

FIGURE

section 4(3)



ENDNOTES**1 Index to endnotes**

	Page
2 Date to which amendments incorporated	404
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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 1 January 2001. Future amendments of the Environmental Protection Act 1994 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
amdt	=	amendment	prov	=	provision
ch	=	chapter	pt	=	part
def	=	definition	pubd	=	published
div	=	division	R[X]	=	Reprint No.[X]
exp	=	expires/expired	RA	=	Reprints Act 1992
gaz	=	gazette	reloc	=	relocated
hdg	=	heading	renum	=	renumbered
ins	=	inserted	rep	=	repealed
lap	=	lapsed	s	=	section
notfd	=	notified	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
om	=	omitted	SIA	=	Statutory Instruments Act 1992
orig	=	original	SIR	=	Statutory Instruments Regulation 1992
p	=	page	SL	=	subordinate legislation
para	=	paragraph	sub	=	substituted
prec	=	preceding	unnum	=	unnumbered
pres	=	present			
prev	=	previous			

4 Table of earlier reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of earlier reprints, see the latest reprint.

5 Tables in earlier reprints

TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Changed citations and remade laws	2
Obsolete and redundant provisions	2

6 List of legislation

Environmental Protection Act 1994 No. 62

date of assent 1 December 1994

ss 1–2 commenced on date of assent

ss 42, 43(2), 45(1)(d), (2), 47(2)(d), 48(2) (so far as it relates to interested parties), 49(3)–(6), (8), (9)(b), (10)(b), (11) (so far as it relates to

interested parties), 64, 65(2) (so far as it relates to interested parties), 66, 200(2)(a)–(b), sch 4 (paragraph (a) of definition “interested party”, paragraph (f) of definition “standard criteria” (so far as it relates to interested parties for an environmental authority)) not yet proclaimed into force

ch 4, pt 4 (ss 147–155), s 222 sch 2 pt B (except so far as it relates to the Litter Act 1971 and the Litter Act Amendment Act 1978) commenced 1 December 1997 (1997 SL No. 343)

s 222 sch 2 pt B (to the extent it relates to the Litter Act 1971 and the Litter Act Amendment Act 1978) commenced 1 July 2000 (2000 SL No. 182)

s 223 sch 3 (so far as it amends the Wet Tropics World Heritage Protection and Management Act 1993) commenced 1 November 1994 (see s 2(2))

s 226(8) never proclaimed into force and exp 1 March 1996 (see ss 224, 228)

s 227(2) never proclaimed into force and exp 1 March 1996 (see ss 224, 228)

s 233(5) never proclaimed into force and exp 1 March 1996 (see ss 224, 234)

s 236(4) never proclaimed into force and exp 1 March 1996 (see s 236(6))

remaining provisions commenced 1 March 1995 (1995 SL No. 47)

amending legislation—

Environmental Legislation Amendment Act 1995 No. 40 pts 1–2

date of assent 27 October 1995

commenced on date of assent

Environmental Legislation Amendment Act (No. 2) 1995 No. 52 pts 1–2

date of assent 22 November 1995

ss 1–2 commenced on date of assent

remaining provisions commenced 2 February 1996 (1996 SL No. 16)

Environmental Protection Amendment Act 1996 No. 10

date of assent 23 May 1996

ss 13 and 24 commenced 1 June 1996 (see s 3)

remaining provisions commenced on date of assent

Environmental Protection Amendment Act 1997 No. 7

date of assent 15 May 1997

s 13 commenced 1 June 1997 (see s 2)

remaining provisions commenced on date of assent

Environmental and Other Legislation Amendment Act 1997 No. 80 pts 1–2 (as amd 1998 No. 13 pt 5 commenced 1 July 1998 (see s 2(1) and 1998 SL No. 52)

date of assent 5 December 1997

ss 1–2 commenced on date of assent

ss 3–4, 29(2)–(3), 34, 39(2) (so far as it relates to the definition “approved code of practice”) commenced 12 December 1997 (1997 SL No. 432)

ss 5–11, 14–15, 18, 28(1), 37 (so far as it relates to the entry for ss 60A, 60C(2) and 60E(5)(b)), 39(1) and 39(2) (so far as it relates to the definitions “approval”, “level 1 approval” and “level 2 approval”) commenced 1 July 1998 (1998 SL No. 52)

ss 12–13, 26, 31, 35 (so far as it relates to the om of s 220(2)(k) and the ins of new s 220(1)(k), commenced 30 March 1998 (1998 SL No. 52)

s 20 commences 1 June 2001 (see s 2(2) as amd 1999 No. 59 s 44 (2))
 (proposed commencement under AIA s 14DA(2) (1998 SL No. 29 s 63 D (2)
 as ins 1998 SL No. 316 s 6)
 remaining provisions commenced 6 July 1998 (1998 SL No. 52)

Building and Integrated Planning Amendment Act 1998 No. 13 ss 1, 2(3) pt 4

date of assent 23 March 1998
 ss 1–2 commenced on date of assent
 ss 35, 38–41, 61 commenced 30 March 1998 (1998 SL No. 55)
 remaining provisions commenced 1 July 1998 (1998 SL No. 55)

Police and Other Legislation (Miscellaneous Provisions) Act 1998 No. 19 ss 1–2 pt 5

date of assent 26 March 1998
 commenced on date of assent

Integrated Planning and Other Legislation Amendment Act 1998 No. 31 ss 1, 2(3)–(4) pt 5

date of assent 3 September 1998
 ss 69, 76, 78–79 commenced 1 July 1998 (see s 2(4))
 remaining provisions commenced on date of assent (see s 2(3))

Explosives Act 1999 No. 15 ss 1–2, 137 sch 1

date of assent 22 April 1999
 ss 1–2 commenced on date of assent
 remaining provisions commenced 11 June 1999 (1999 SL No. 108)

Statute Law (Miscellaneous Provisions) Act 1999 No. 19 ss 1–3 sch

date of assent 30 April 1999
 commenced on date of assent

Radiation Safety Act 1999 No. 20 ss 1–2, 232

date of assent 30 April 1999
 ss 1–2 commenced on date of assent
 remaining provision commenced 1 January 2000 (1999 SL No. 329)

Police Powers and Responsibilities Act 2000 No. 5 ss 1–2, 461 (prev s 373) sch 3 (as amd 2000 No. 22 ss 1, 28 (as from 23 June 2000))

date of assent 23 March 2000
 ss 1–2 commenced on date of assent
 remaining provisions commenced 1 July 2000 (see s 2(1), (3) and 2000 SL No. 174)

Environmental Protection and Other Legislation Amendment Act 2000 No. 64 ss 1–2, pt 2, ss 3(2), 174 sch

date of assent 24 November 2000
 ss 1–2, 46 (to the extent it ins the Environmental Protection Act 1994 s 219AA), 47, 56 commenced on date of assent
 s 6 (to the extent it ins ss 34BZ definition “submission period”), 34CB–34CH, 34CI(b)–(c), 34CJ(b)(iv), 34CO(a)(ii), 34CX(d), 34CZ(2), 34DD(2)(b)(iv), 34DH(2), 34DK, 34DL(b), 34DO(1)(d), 34DO(2) (to the extent that it ins the words ‘and any submitter’), 34DP(c), 34EH, 37(5) (to the extent it ins s 200(2)(a)–(b)), 46 (to the

extent that it ins the words ‘and any submitters’ in s 219AG(2)), 53
 (to the extent it ins sch 1, pt 2, div 1, entries for ss 34CF(1)–(2)),
 (3)(b)(i) not yet proclaimed into force
 remaining provisions commenced 1 January 2001 (2000 SL No. 350)

7 List of annotations

This reprint has been renumbered—see table of renumbered provisions in endnote 9.

CHAPTER 1—PRELIMINARY

PART 3—INTERPRETATION

Division 1—Dictionary

div hdg sub 2000 No. 64 s 3(2) sch

Division 2—Key concepts

div hdg sub 2000 No. 64 s 3(2) sch

Waste

s 13 sub 1995 No. 52 s 4

Environmental harm

s 14 amd 1996 No. 10 s 4

Subdivision 4—Environmentally relevant activities

sdiv 4 (ss 18–20) ins 2000 No. 64 s 4

Relationship with other Acts

s 23 amd 1997 No. 80 s 4; 1999 No. 20 s 323

sub 2000 No. 64 s 5

CHAPTER 2—ENVIRONMENTAL PROTECTION POLICIES

Preparation of draft policies

s 26 amd 1996 No. 10 s 5

Effect of national environment protection measures

s 34 prev s 34 om 1999 No. 19 s 3 sch

Public access to application

s 34CB ins 2000 No. 64 s 6

Public notice of application

s 34CC ins 2000 No. 64 s 6

Required content of application notice

s 34CD ins 2000 No. 64 s 6

Declaration of compliance

s 34CE ins 2000 No. 64 s 6

Substantial compliance may be accepted

s 34CF ins 2000 No. 64 s 6

Right to make submissions 34CG ins 2000 No. 64 s 6**Acceptance of submissions**s 34CH ins 2000 No. 64 s 6**Public notice may be required for licence amendment**s 34DK ins 2000 No. 64 s 6**Administering authority may call conference**s 34EH ins 2000 No. 64 s 6**Application date**s 35 prev s 35 amd 1996 No. 10 s 6
sub 1997 No. 7 s 4
amd 1997 No. 80 s 5
om 2000 No. 64 s 7**CHAPTER 3—ENVIRONMENTAL IMPACT STATEMENTS**ch hdg ins 2000 No. 64 s 6**PART 1—EIS PROCESS**pt hdg prev pt 1 hdg om 2000 No. 64 s 8
pres pt 1 hdg ins 2000 No. 64 s 6**Division 1—Preliminary**div hdg ins 2000 No. 64 s 6**Subdivision 1—Application**sdiv hdg ins 2000 No. 64 s 6**When EIS process applies**s 37 prev s 37 om 1999 No. 19 sch
pres s 37 ins 2000 No. 64 s 6**Subdivision 2—Definitions for pt 1**sdiv hdg ins 2000 No. 64 s 6**PART 3—ENVIRONMENTALLY RELEVANT ACTIVITIES**

pt hdg om 2000 No. 64 s 8

Who is an “affected person” for a projects 38 prev s 38 om 2000 No. 64 s 8
pres s 38 ins 2000 No. 64 s 6**Other definitions**s 39 prev s 39 amd 1996 No. 10 s 7
sub 1997 No. 80 s 6
om 2000 No. 64 s 8
pres s 39 ins 2000 No. 64 s 6**Subdivision 3—Purposes of EIS**sdiv hdg ins 2000 No. 64 s 6**Purposes**

s 40 prev s 40 amd 1997 No. 80 s 7

om 2000 No. 64 s 8
pres s 40 ins 2000 No. 64 s 6

**PART 4—ENVIRONMENTAL AUTHORITIES FOR ENVIRONMENTALLY
RELEVANT ACTIVITIES WITHOUT DEVELOPMENT APPROVALS**

pt hdg sub 1998 No. 13 s 37
om 2000 No. 64 s 8

Division 1A—Preliminary

div hdg ins 1998 No. 13 s 37
om 2000 No. 64 s 8

Application of pt 4

s 40A ins 1998 No. 13 s 37
amd 1998 No. 31 s 70
om 2000 No. 64 s 8

Division 2—Terms of reference stage

div hdg ins 2000 No. 64 s 6

Subdivision 1—Draft terms of reference

sdiv hdg ins 2000 No. 64 s 6

Submission

s 41 prev s 41 amd 1997 No. 80 s 8; 1998 No. 13 s 38
om 2000 No. 64 s 8
pres s 41 ins 2000 No. 64 s 6

Subdivision 2—Public notification of draft terms of reference

sdiv hdg ins 2000 No. 64 s 6

Preparation of TOR notice

s 42 prev s 42 amd 1995 No. 40 s 3
om 2000 No. 64 s 8
pres s 42 ins 2000 No. 64 s 6

Public notification

s 43 prev s 43 om 2000 No. 64 s 8
pres s 43 ins 2000 No. 64 s 6

Proponent to be given comments

s 44 prev s 44 sub 1996 No. 10 s 8
amd 1997 No. 80 s 9
om 2000 No. 64 s 8
pres s 44 ins 2000 No. 64 s 6

Advice to chief executive

s 45 prev s 45 amd 1997 No. 80 s 10; 1998 No. 13 s 39
om 2000 No. 64 s 8
pres s 45 ins 2000 No. 64 s 6

Subdivision 3—Final terms of reference

sdiv hdg ins 2000 No. 64 s 6

Finalising terms of reference

- s 46** prev s 46 amd 1996 No. 10 s 9; 1997 No. 80 s 11
om 2000 No. 64 s 8
pres s 46 ins 2000 No. 64 s 6

Division 3—Submission stage

- div hdg** ins 2000 No. 64 s 6

When EIS may be submitted

- s 47** prev s 47 om 2000 No. 64 s 8
pres s 47 ins 2000 No. 64 s 6

Provisional licensee may apply for new licence

- s 47A** ins 1996 No. 10 s 10
om 2000 No. 64 s 8

Chief executive may require copies of EIS

- s 48** prev s 48 amd 1995 No. 40 s 4
om 2000 No. 64 s 8
pres s 48 ins 2000 No. 64 s 6

Division 2—Amendment of licences

- div hdg** om 2000 No. 64 s 8

Decision on whether EIS may proceed

- s 49** prev s 49 amd 1996 No. 10 s 11, 1998 No. 13 s 40
om 2000 No. 64 s 8
pres s 49 ins 2000 No. 64 s 6

Ministerial review of refusal to allow to proceed

- s 50** prev s 50 amd 1997 No. 80 s 12
om 2000 No. 64 s 8
pres s 50 ins 2000 No. 64 s 6

Division 4—Notification stage

- div hdg** ins 2000 No. 64 s 6

Subdivision 1—Public notice requirements

- sdiv hdg** ins 2000 No. 64 s 6

Public notification

- s 51** prev s 51 amd 1998 No. 13 s 41
om 2000 No. 64 s 8
pres s 51 ins 2000 No. 64 s 6

Division 3—Dealings with licences

- div hdg** om 2000 No. 64 s 8

Required content of EIS notice

- s 52** prev s 52 om 2000 No. 64 s 8
pres s 52 ins 2000 No. 64 s 6

Subdivision 1—Public notice requirements

- sdiv hdg** ins 2000 No. 64 s 6

Declaration of compliance

s 53 prev s 53 om 2000 No. 64 s 8
pres s 53 ins 2000 No. 64 s 6

Subdivision 2—Submissions

sdiv hdg ins 2000 No. 64 s 6

Right to make submission

s 54 prev s 54 om 2000 No. 64 s 8
pres s 54 ins 2000 No. 64 s 6

Acceptance of submissions

s 55 prev s 55 om 2000 No. 64 s 8
pres s 55 ins 2000 No. 64 s 6

Response to submissions

s 56 prev s 56 om 2000 No. 64 s 8
pres s 56 ins 2000 No. 64 s 6

Division 5—EIS assessment report

div hdg ins 2000 No. 64 s 6

EIS assessment report

s 57 prev s 57 om 2000 No. 64 s 8
pres s 57 ins 2000 No. 64 s 6

Criteria for preparing report

s 58 prev s 58 amd 1995 No. 40 s 5
om 2000 No. 64 s 8
pres s 58 ins 2000 No. 64 s 6

Division 4—Suspension and cancellation of licences

div hdg om 2000 No. 64 s 8

Required content of report

s 59 prev s 59 om 2000 No. 64 s 8
pres s 59 ins 2000 No. 64 s 6

Division 6—Completion of process

div hdg ins 2000 No. 64 s 6

When process is completed

s 60 prev s 60 amd 1997 No. 80 s 13
om 2000 No. 64 s 8
pres s 60 ins 2000 No. 64 s 6

Division 4A—Amendment, suspension and cancellation of level 1 approvals

div hdg ins 1997 No. 80 s 14
om 2000 No. 64 s 8

Subdivision 1—Amendment of level 1 approvals

sdiv 1 (ss 60A–60C) ins 1997 No. 80 s 14
om 2000 No. 64 s 8

Subdivision 2—Suspension and cancellation of level 1 approvals

sdiv 2 (ss 60D–60E) ins 1997 No. 80 s 14
om 2000 No. 64 s 8

**PART 4A—ENVIRONMENTAL AUTHORITIES FOR LEVEL 1
ENVIRONMENTALLY RELEVANT ACTIVITIES WITH
DEVELOPMENT APPROVALS**

pt hdg ins 1998 No. 13 s 42
om 2000 No. 64 s 8

Division 1—Preliminary

div hdg ins 1998 No. 13 s 42
om 2000 No. 64 s 8

Application of pt 4A

s 60F ins 1998 No. 13 s 42
amd 1998 No. 31 s 71
om 2000 No. 64 s 8

Division 2—Licences

div 2 (ss 60G–60N) ins 1998 No. 13 s 42
om 2000 No. 64 s 8

Division 3—Level 1 approvals

div 3 (60O–60V) ins 1998 No. 13 s 42
om 2000 No. 64 s 8

Division 4—Dealings with environmental authorities

div 4 (ss 60W–60Y) ins 1998 No. 13 s 42
om 2000 No. 64 s 8

**PART 4B—DEVELOPMENT APPROVALS FOR CERTAIN
ENVIRONMENTALLY RELEVANT ACTIVITIES**

pt hdg ins 1998 No. 13 s 42
om 2000 No. 64 s 8

Division 1—Preliminary

div hdg ins 1998 No. 13 s 42
om 2000 No. 64 s 8

Application of pt 4B

s 60Z ins 1998 No. 13 s 42
amd 1998 No. 31 s 72
om 2000 No. 64 s 8

Division 2—Assessing development applications

div hdg ins 1998 No. 13 s 42
om 2000 No. 64 s 8

Assessing application

s 60ZA ins 1998 No. 13 s 42
amd 1998 No. 31 s 73
om 2000 No. 64 s 8

Conditions of development approval

s 60ZB ins 1998 No. 13 s 42
 amd 1998 No. 13 s 74
 om 2000 No. 64 s 8

Division 3—Effect of issue of certain development permits

div hdg ins 1998 No. 13 s 42
 sub 1998 No. 31 s 75
 om 2000 No. 64 s 8

Development permits continue to have effect

s 60ZC ins 1998 No. 13 s 42
 sub 1998 No. 31 s 75
 om 2000 No. 64 s 8

Cancellation of pt 4 environmental authority and issue of pt 4A environmental authority

s 60ZD ins 1998 No. 13 s 42
 om 1998 No. 31 s 75

Issue of environmental authority on issue of development approval

s 60ZE ins 1998 No. 13 s 42
 om 1998 No. 31 s 75

Division 4—Offences

div hdg ins 1998 No. 13 s 42
 om 2000 No. 64 s 8

Offence to contravene development condition

s 60ZF ins 1998 No. 13 s 42
 om 2000 No. 64 s 8

PART 4C—GENERAL PROVISIONS ABOUT ENVIRONMENTALLY RELEVANT ACTIVITIES

pt hdg sub 1998 No. 13 s 43
 om 2000 No. 64 s 8

Division 7—Miscellaneous provisions

div hdg ins 2000 No. 64 s 6

Subdivision 1—Inquiries by chief executive

sdiv hdg ins 2000 No. 64 s 6

Application of sdiv 1

s 61 prev s 61 amd 1998 No. 13 s 44
 om 2000 No. 64 s 8
 pres s 61 ins 2000 No. 64 s 6

Special provisions for environmental authorities to carry out new environmentally relevant activities

s 61A ins 1996 No. 10 s 12
 om 2000 No. 64 s 8

Chief executive may seek advice, comment or information

s 62 prev s 62 amd 1998 No. 31 s 76

om 2000 No. 64 s 8
pres s 62 ins 2000 No. 64 s 6

Disclosure of relevant documents or information

s 63 prev s 63 om 2000 No. 64 s 8
pres s 63 ins 2000 No. 64 s 6

Inquiry does not alter process

s 64 prev s 64 amd 1998 No. 31 s 77
om 2000 No. 64 s 8
pres s 64 ins 2000 No. 64 s 6

Subdivision 2—Public inspection

sdiv hdg ins 2000 No. 64 s 6

Public access to draft terms of reference or submitted EIS

s 65 prev s 65 amd 1997 No. 7 s 5; 1998 No. 31 s 78
om 2000 No. 64 s 8
pres s 65 ins 2000 No. 64 s 6

Subdivision 3—Amending EIS

sdiv hdg ins 2000 No. 64 s 6

Amending EIS

s 66 prev s 66 om 2000 No. 64 s 8
pres s 66 ins 2000 No. 64 s 6

Subdivision 4—Effects of noncompliance with process

sdiv hdg ins 2000 No. 64 s 6

Process is suspended

s 67 prev s 67 amd 1998 No. 31 s 79
om 2000 No. 64 s 8
pres s 67 ins 2000 No. 64 s 6

Substantial compliance with notice requirements may be accepted

s 68 prev s 68 amd 1996 No. 10 s 13, 1998 No. 13 s 45
om 2000 No. 64 s 8
pres s 68 ins 2000 No. 64 s 6

PART 2—VOLUNTARY PREPARATION OF EIS

pt hdg ins 2000 No. 64 s 6

Purpose of pt 2

s 69 prev s 69 om 2000 No. 64 s 8
pres s 69 ins 2000 No. 64 s 6

Projects that may be approved for EIS

s 70 prev s 70 sub 1997 No. 7 s 6
amd 1997 No. 80 s 15
om 2000 No. 64 s 8
pres s 70 ins 2000 No. 64 s 6

Material change of use for Integrated Planning Act

s 70A ins 1998 No. 13 s 46
om 2000 No. 64 s 8

Requirements for application

s 71 ins 2000 No. 64 s 6

Deciding application

s 72 ins 2000 No. 64 s 6

**CHAPTER 4—DEVELOPMENT APPROVALS AND ENVIRONMENTAL
AUTHORITIES OTHER THAN FOR MINING ACTIVITIES**

ch hdg ins 2000 No. 64 s 6

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pt hdg ins 2000 No. 64 s 6

Application of ch 4

s 73 ins 2000 No. 64 s 6

Types of environmental authority under ch 4

s 74 ins 2000 No. 64 s 6

PART 2—DEVELOPMENT APPROVALS

pt hdg ins 2000 No. 64 s 6

Division 1—Assessable development use for Integrated Planning Act

div hdg ins 2000 No. 64 s 6

Development for Integrated Planning Act, sch 8, pt 1, item 6

s 75 ins 2000 No. 64 s 6

Additional material change of use for Integrated Planning Act

s 76 ins 2000 No. 64 s 6

Division 2—Assessing development applications

div hdg ins 2000 No. 64 s 6

Application of div 2

s 77 ins 2000 No. 64 s 6

Assessing development applications

s 78 ins 2000 No. 64 s 6

Conditions of development approval

s 79 ins 2000 No. 64 s 6

Division 3—Effect of issue of certain development approvals

div hdg ins 2000 No. 64 s 6

Development approvals continue to have effect

s 80 ins 2000 No. 64 s 6

PART 3—ENVIRONMENTAL AUTHORITY APPLICATIONS

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div hdg ins 2000 No. 64 s 6

Operation of div 1

s 81 ins 2000 No. 64 s 6

Requirements for application

s 82 ins 2000 No. 64 s 6

Deciding application

s 83 ins 2000 No. 64 s 6

Criteria for decision

s 84 ins 2000 No. 64 s 6

Conditions that may be imposed

s 85 ins 2000 No. 64 s 6

Steps after granting application

s 86 prev s 86 om 2000 No. 64 s 13
pres s 86 ins 2000 No. 64 s 6

Division 2—Obtaining licence (without development approval)

div hdg ins 2000 No. 64 s 6

Subdivision 1—General provisions for obtaining licence

sdiv hdg ins 2000 No. 64 s 6

Operation of sdiv 1

s 87 ins 2000 No. 64 s 6

Definition for sdiv 1

s 88 ins 2000 No. 64 s 6; 2000 No. 64 s 6

Requirements for application

s 89 ins 2000 No. 64 s 6

Deciding application

s 90 ins 2000 No. 64 s 6; 2000 No. 64 s 6

Criteria for decision

s 91 ins 2000 No. 64 s 6; 2000 No. 64 s 6

Conditions that may and must be imposed

s 92 ins 2000 No. 64 s 6

Steps after granting application

s 93 ins 2000 No. 64 s 6

Subdivision 2—Provisional licences

sdiv hdg ins 2000 No. 64 s 6

When provisional licence may be issued

s 94 ins 2000 No. 64 s 6

Steps after decision to grant provisional licence

s 95 ins 2000 No. 64 s 6

Term of provisional licence

s 96 prev s 96 om 2000 No. 64 s 15
pres s 96 ins 2000 No. 64 s 6; 2000 No. 64 s 6

Reminder notices

s 97 ins 2000 No. 64 s 6

Application for new licence

s 98 ins 2000 No. 64 s 6

Division 3—Obtaining level 2 approval

div hdg ins 2000 No. 64 s 6

Operation of div 3

s 99 ins 2000 No. 64 s 6

Requirements for application

s 100 ins 2000 No. 64 s 6

Deciding application

s 101 ins 2000 No. 64 s 6

Criteria for decision

s 102 ins 2000 No. 64 s 6

Conditions that may and must be imposed

s 103 ins 2000 No. 64 s 6

Steps after granting application

s 104 ins 2000 No. 64 s 6

Division 4—Miscellaneous provisions

div hdg ins 2000 No. 64 s 6

When environmental authorities under pt 3 take effect

s 105 ins 2000 No. 64 s 6; 2000 No. 64 s 6

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s 106 ins 2000 No. 64 s 6

Information notice about decision on application

s 107 ins 2000 No. 64 s 6; 2000 No. 64 s 6

PART 4—CONVERSION OF LICENCE TO LEVEL 1 APPROVAL

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div hdg ins 2000 No. 64 s 6

When conversion application may be made

s 108 ins 2000 No. 64 s 6

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s 109 ins 2000 No. 64 s 6

Division 2—Processing conversion applications

div hdg ins 2000 No. 64 s 6

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s 110 ins 2000 No. 64 s 6

Criteria for decisions 111 ins 2000 No. 64 s 6; 2000 No. 64 s 6**Conditions of converted environmental authority**

s 112 ins 2000 No. 64 s 6

Steps after granting application

s 113 ins 2000 No. 64 s 6

When conversion takes effect

s 114 ins 2000 No. 64 s 6

Information notice about decision on conversion applications 115 ins 2000 No. 64 s 6; 2000 No. 64 s 6**PART 5—AMENDING ENVIRONMENTAL AUTHORITIES BY APPLICATION**

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s 116 ins 2000 No. 64 s 6

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s 117 ins 2000 No. 64 s 6

Deciding applications 118 ins 2000 No. 64 s 6; 2000 No. 64 s 6**Meaning of “owner” for pt 9B**s 118D ins 1997 No. 80 s 21
om 2000 No. 64 s 22**Criteria for decision**

s 119 ins 2000 No. 64 s 6

Decision on application

s 120 ins 2000 No. 64 s 6

Steps after making decisions 121 ins 2000 No. 64 s 6; 2000 No. 64 s 6**When amendment takes effect**s 122 ins 2000 No. 64 s 6; 2000 No. 64 s 6**PART 6—DEALINGS WITH LICENCES**

pt hdg ins 2000 No. 64 s 6

Division 1—Required notice to proposed transferee

div hdg ins 2000 No. 64 s 6

Notice of disposal by licence holder

s 123 ins 2000 No. 64 s 6

Division 2—Transfer of licences (without development approval)

div hdg ins 2000 No. 64 s 6

Transfer only by approval

s 124 ins 2000 No. 64 s 6

Requirements for transfer application

s 125 ins 2000 No. 64 s 6

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s 376 ins 1997 No. 80 s 21
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s 385 ins 1997 No. 80 s 21
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 def **“chapter 3, part 4 environmental authority”** ins 1998 No. 13 s 65(2)
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 def “**conditions**” ins 2000 No. 64 s 56(2)
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 def “**conversion application**” ins 2000 No. 64 s 56(2)
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 def “**corresponding law**” ins 2000 No. 64 s 56(2)
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 def “**dangerous goods code**” ins 1997 No. 80 s 39(2)
 def “**deciding**” ins 2000 No. 64 s 56(2)
 def “**development**” ins 1998 No. 13 s 65(2)
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 def “**EMP submission**” ins 2000 No. 64 s 56(2)
 def “**engaging**” ins 1995 No. 40 s 9(3)
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- def “**EPP requirement**” ins 2000 No. 64 s 56(2)
- def “**exempted material**” ins 2000 No. 64 s 56(2)
- def “**exploration permit**” ins 2000 No. 64 s 56(2)
- def “**final rehabilitation report**” ins 2000 No. 64 s 56(2)
- def “**final terms of reference**” ins 2000 No. 64 s 56(2)
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- def “**FRR assessment report**” ins 2000 No. 64 s 56(2)
- def “**hazardous contaminant**” ins 1997 No. 80 s 39(2)
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- def “**holder**” ins 2000 No. 64 s 56(2)
- def “**IEMS submission**” ins 2000 No. 64 s 56(2)
- def “**information notice**” ins 2000 No. 64 s 56(2)
- def “**integrated authority**” ins 2000 No. 64 s 56(2)
- def “**integrated environmental management system**” ins 1998 No. 13 s 65(2)
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- def “**Integrated Planning Act**” ins 1998 No. 13 s 65(2)
- def “**interested party**” om 2000 No. 64 s 56(1)
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- def “**interim enforcement order**” ins 1998 No. 13 s 65(2)
- def “**interstate environmental authority**” ins 1995 No. 40 s 9(3)
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- def “**joint applicants**” ins 2000 No. 64 s 56(2)
- def “**joint application**” ins 2000 No. 64 s 56(2)
- def “**level 1 approval**” ins 1997 No. 80 s 39(2) (om by 1998 No. 13 s 67)
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- def “**level 1 approval (with development approval)**” ins 1998 No. 13 s 65(2)
- def “**level 1 approval (without development approval)**” ins 1998 No. 13 s 65(2)
- def “**level 1 environmentally relevant activity**” ins 2000 No. 64 s 56(2)
- def “**level 2 approval**” sub 2000 No. 64 s 56(1)–(2)
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- def “**licence**” amd 1998 No. 13 s 65(1)
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- def “**licensed place**” amd 2000 No. 64 s 56(6)
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- def “**mineral development licence**” ins 2000 No. 64 s 56(2)
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- def “**mining activity**” ins 2000 No. 64 s 56(2)
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- def “**Minister’s decision**” ins 2000 No. 64 s 56(2)
- def “**missing information**” ins 2000 No. 64 s 56(2)
- def “**MRA Minister**” ins 2000 No. 64 s 56(2)
- def “**national scheme laws**” sub 1999 No. 19 sch
- def “**noise abatement direction**” om 2000 No. 64 s 56(1)
- def “**non-standard application**” ins 2000 No. 64 s 56(2)
- def “**non-standard environmental authority (mining activities)**” ins 2000 No. 64 s 56(2)
- def “**notifiable activity**” ins 1997 No. 80 s 39(2)
- def “**objection period**” ins 2000 No. 64 s 56(2)
- def “**objections decision**” ins 2000 No. 64 s 56(2)
- def “**objector**” ins 2000 No. 64 s 56(2)
- def “**operational land**” ins 2000 No. 64 s 56(2)
- def “**original decision**” amd 2000 No. 64 s 3(2) sch
- def “**owner**” ins 2000 No. 64 s 56(2)
- def “**person**” ins 2000 No. 64 s 56(2)
- def “**preliminary investigation**” ins 1997 No. 80 s 39(2)
 - sub 2000 No. 64 s 56(1)–(2)
- def “**properly made objection**” ins 2000 No. 64 s 56(2)
- def “**properly made submission**” ins 2000 No. 64 s 56(2)
- def “**proponent**” ins 2000 No. 64 s 56(2)
- def “**proposed action**” ins 2000 No. 64 s 56(2)
- def “**proposed action decision**” ins 2000 No. 64 s 56(2)
- def “**proposed holder**” ins 2000 No. 64 s 56(2)
- def “**proposed transferee**” ins 2000 No. 64 s 56(2)
- def “**prospecting permit**” ins 2000 No. 64 s 56(2)
- def “**provisional licence**” ins 2000 No. 64 s 56(2)
- def “**public notice requirement**” ins 2000 No. 64 s 56(2)
- def “**public notice requirements**” ins 2000 No. 64 s 56(2)
- def “**recipient**” amd 1997 No. 80 s 39(3)
- def “**referral agency**” ins 1998 No. 13 s 65(2)
- def “**refusal period**” ins 2000 No. 64 s 56(2)
- def “**registrar**” ins 1997 No. 80 s 39(2)
- def “**relevant local government**” ins 2000 No. 64 s 56(2)
- def “**relevant mining activity**” ins 2000 No. 64 s 56(2)
- def “**relevant mining lease**” ins 2000 No. 64 s 56(2)
- def “**relevant mining tenement**” ins 2000 No. 64 s 56(2)

- def **“relevant standard environmental conditions”** ins 2000 No. 64 s 56(2)
- def **“remediate”** ins 1997 No. 80 s 39(2)
- def **“remediation notice”** ins 1997 No. 80 s 39(2)
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- def **“replacement environmental authority”** ins 2000 No. 64 s 56(2)
- def **“review or appeal details”** ins 2000 No. 64 s 56(2)
- def **“sanitary convenience”** ins 1995 No. 52 s 11
- def **“security”** ins 2000 No. 64 s 56(2)
- def **“schedule 8 development”** ins 1998 No. 31 s 81
- def **“site investigation report”** ins 1997 No. 80 s 39(2)
- def **“site management plan”** ins 1997 No. 80 s 39(2)
- def **“standard application”** ins 2000 No. 64 s 56(2)
- def **“standard environmental authority (mining activities)”** ins 2000 No. 64 s 56(2)
- def **“standard environmental conditions”** ins 2000 No. 64 s 56(2)
- def **“standard criteria”** amd 1997 No. 80 s 39 (4)–(6); 2000 No. 64 s 56(7)–(8)
- def **“standard mining activity”** ins 2000 No. 64 s 56(2)
- def **“State Development Act”** ins 2000 No. 64 s 56(2)
- def **“submission period”** ins 2000 No. 64 s 56(2)
- def **“submitted EMOS”** ins 2000 No. 64 s 56(2)
- def **“submitter”** ins 2000 No. 64 s 56(2)
- def **“suitability report”** ins 2000 No. 64 s 56(2)
- def **“suitability statement”** ins 1997 No. 80 s 39(2)
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- def **“surrender application”** ins 2000 No. 64 s 56(2)
- def **“surrender notice”** ins 2000 No. 64 s 56(2)
- def **“TOR notice”** ins 2000 No. 64 s 56(2)
- def **“transfer application”** ins 2000 No. 64 s 56(2)
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- def **“validation report”** ins 1997 No. 80 s 39(2)
- def **“waste management works”** ins 1995 No. 52 s 11

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10 Provisions that have not commenced and are not incorporated into reprint

The following provisions are not incorporated in this reprint because they had not commenced before the reprint date (see Reprints Act 1992, s 5(c)).

Environmental and Other Legislation Amendment Act 1997 No. 80 s 20 reads as follows—

Amendment of s 118B (Waste removal etc. by private contractors)

20.(1) Section 118B¹⁵⁰—

insert—

‘**(2A)** The fee charged by a local government for an approval must not be more than the maximum fee prescribed under a regulation for the approval.

‘**(2B)** Also, a local government must not charge a fee if waste management works to be performed under the approval consist only of transporting waste through its area.’

(2) Section 118B—

¹⁵⁰ Section 118B renumbered as section 369—see table of renumbered provisions in endnote 9.

insert—

‘(5A) However, the local government must not impose conditions on the approval if the approval is for waste management works that are an environmentally relevant activity.’.

(3) Section 118B—

insert—

‘(9) This section does not apply to waste management works carried out under a mining authority for the exclusive purpose of dealing with waste generated by activities carried out under the authority.’.

Environmental and Other Legislation Amendment Act 2000 No. 64 ss 6, 37(5), 46 and 53 read as follows—

Insertion of new chs 2A–2D

6. After chapter 2—

insert—

‘Definitions for sdiv 1

‘34BZ.¹⁵¹ *In this subdivision—*

“submission period”, for the application, means—

- (a) the submission period for the application under section 34CD(1)(b) and (2); or
- (b) if section 34CF applies—any new submission period fixed under section 34CF(3)(b).¹⁵²

‘Public access to application

‘34CB.(1) The administering authority must, from the application date to the review date—

¹⁵¹ Section 34BZ renumbered as section 88—see table of renumbered provisions in endnote 9.

¹⁵² The text in italics commenced on 1 January 2001 and is included here for information purposes only.

- (a) keep the application open for inspection by members of the public at—
 - (i) if the authority is a local government—its public office; or
 - (ii) otherwise—at the authority’s head office and the other places the administering executive considers appropriate; and
- (b) permit a person to take extracts from the application or, on payment of the appropriate fee to the authority, give the person a copy of the application, or part of the application.

‘(2) This section is subject to section 34CF.¹⁵³

‘Public notice of application

‘**34CC.(1)** The applicant must, within 2 days after the application date—

- (a) publish a notice about the application (the “**application notice**”) in a newspaper circulating generally in the area where the environmentally relevant activity is proposed to be carried out; and
- (b) if the application relates to premises—
 - (i) place the notice on the premises; and
 - (ii) give the notice to the occupier of any adjoining premises.

‘(2) This section is subject to section 34CF.

‘Required content of application notice

‘**34CD.(1)** The application notice must be in the approved form and state the following—

- (a) that anyone may make a submission to the administering authority about the application;
- (b) the period (the “**submission period**”) during which submissions may be made;
- (c) how to make a properly made submission;

¹⁵³ Section 34CF (Substantial compliance may be accepted)

(d) another matter prescribed under a regulation.

‘(2) The submission period must not end before the later of the following—

- (a) a day or time fixed by the authority before the notice is published;
- (b) 10 days after the application notice is published, placed and given under section 34CC.

‘Declaration of compliance

‘**34CE.(1)** The applicant must, within 7 days after the application date, give the administering authority a statutory declaration declaring whether or not the applicant has complied with the notice requirements under section 34CC and 34CD.

‘(2) A copy of the application notice must be attached to the declaration.

‘(3) The proponent is taken to have complied with the requirements if—

- (a) a declaration is given under this section; and
- (b) the declaration states the proponent has complied with the requirements.

‘Substantial compliance may be accepted

‘**34CF.(1)** If the applicant has not complied with the notice requirements under section 34CC or 34CD, the administering authority must decide whether to allow the application to proceed under this part as if the noncompliance had not happened.

‘(2) The authority may decide to allow the application to proceed only if it is satisfied there has been substantial compliance with the requirements.

‘(3) If the authority decides not to allow the application to proceed—

- (a) any steps purportedly taken to comply with sections 34CC and 34CD are of no effect; and
- (b) the authority must, within 10 days after the decision is made, give the applicant—
 - (i) a written notice fixing a new period for giving the application

notice (the **“new notice period”**); and

- (ii) if the submission period under section 34CD has or will start before the new notice period—a new submission period for the application; and
- (iii) an information notice about the decision not to allow the application to proceed and the decision to fix the new notice period.

‘(4) The new notice period applies despite section 34CD(2).

‘Right to make submission

‘**34CG.** A person may, within the submission period, make a submission to the chief executive about the application.

‘Acceptance of submissions

‘**34CH.(1)** The administering authority must accept a submission if it—

- (a) is written; and
- (b) is signed by or for each person (**“signatory”**) who made the submission; and
- (c) states the name and address of each signatory; and
- (d) is made to the authority; and
- (e) is received on or before the last day of the submission period.

‘(2) A submission that complies with subsection (1) is called a **“properly made submission”**.

‘(3) The authority may accept a written submission even if it is not a properly made submission.

'Deciding application

'34CI.¹⁵⁴ *Subject to section 34CM,*¹⁵⁵ *the administering authority must, within the later of the following periods to end, consider and decide whether to grant or refuse the application—*

- (a) 28 days after the application date;*
- (b) 28 days after the authority receives the declaration of compliance under section 34CE;*
- (c) 10 days after the submission period ends.*¹⁵⁶

'Criteria for decision

'34CJ.¹⁵⁷ *In deciding whether to grant or refuse the application, the administering authority—*

- (a) must comply with any relevant EPP requirement; and*
- (b) subject to paragraph (a), must consider the following—*
 - (i) the standard criteria;*
 - (ii) additional information given in relation to the application;*
 - (iii) any suitability report obtained for the application;*
 - (iv) any properly made submission for the application;*
 - (v) the views expressed at a conference held in relation to the application.*¹⁵⁸

¹⁵⁴ Section 34CI renumbered as section 90—see table of renumbered provisions in endnote 9.

¹⁵⁵ Section 34CM (When provisional licence may be issued)
Section 34 CM renumbered as section 94—see table of renumbered provisions in endnote 9.

¹⁵⁶ The text in italics commenced on 1 January 2001 and is included here for information purposes only.

¹⁵⁷ Section 34CJ renumbered as section 91—see table of renumbered provisions in endnote 9.

¹⁵⁸ The text in italics commenced on 1 January 2001 and is included here for information purposes only.

‘Term of provisional licence

‘34CO.¹⁵⁹ *A provisional licence—*

- (a) *takes effect on the later of the following—*
 - (i) *the day stated in it;*
 - (ii) *if a properly made submission was made for the licence application to which the provisional licence relates—the review date for that application; and*
- (b) *remains in force until—*
 - (i) *the fifth anniversary of the day it was issued; or*
 - (ii) *if an earlier day is stated in the provisional licence for it to expire—the earlier day.*¹⁶⁰

‘When environmental authorities under pt 3 take effect

‘34CX.¹⁶¹ *An environmental authority, other than a provisional licence, granted under this part takes effect on the later of the following—*

- (a) *the day of its issue;*
- (b) *a later day stated in it;*
- (c) *on the happening of an event stated in the authority for it to take effect;*
- (d) *if the authority was granted under division 2, subdivision 1,¹⁶² and a properly made submission was made the application for the authority—the review date.*¹⁶³

¹⁵⁹ Section 34CO renumbered as section 96—see table of renumbered provisions in endnote 9.

¹⁶⁰ The text in italics commenced on 1 January 2001 and is included here for information purposes only.

¹⁶¹ Section 34CX renumbered as section 105—see table of renumbered provisions in endnote 9.

¹⁶² Division 2, subdivision 1 (General provisions for obtaining licence)

¹⁶³ The text in italics commenced on 1 January 2001 and is included here for information purposes only.

‘Information notice about decision on application

‘34CZ.(1)¹⁶⁴ *The administering authority must, within 10 days after making a decision to do the following for an application under this part for an environmental authority, give the applicant and any submitter for the application an information notice about the decision—*

- (a) to refuse the application;*
- (b) to impose a condition on the environmental authority, other than a condition that is the same, or is to the same effect, as a condition agreed to or requested by the applicant.*

‘(2) If the administering authority decides, under division 2,¹⁶⁵ to grant a licence it must, within 10 days after making the decision, give any submitter for the licence application an information notice about the decision.¹⁶⁶

‘Criteria for decision

‘34DD.(1)¹⁶⁷ *The administering authority may grant a conversion application only if it is satisfied the risk of environmental harm from the activity is insignificant because—*

- (a) of any applicable cleaner production techniques used by the applicant; and*
- (b) of any applicable waste minimisation practices used by the applicant; and*
- (c) of contingency plans the applicant has developed to manage abnormal or emergency situations that may arise in carrying out the activity; and*

¹⁶⁴ Section 34CZ renumbered as section 107—see table of renumbered provisions in endnote 9.

¹⁶⁵ Division 2 (Obtaining licence (without development approval))

¹⁶⁶ The text in italics commenced on 1 January 2001 and is included here for information purposes only.

¹⁶⁷ Section 34DD renumbered as section 111—see table of renumbered provisions in endnote 9.

- (d) *the applicant's implementation of best practice environmental management techniques has resulted in levels of environmental protection over and above the levels required by—*
 - (i) *the conditions of the licence; and*
 - (ii) *if the licence is a licence (with development approval)—the development conditions of the development approval for the licensed activity; and*
- (e) *of the applicant's compliance with the general environmental duty.*

'(2) Also, if the application relates to a licence (without development approval), in deciding whether to grant or refuse the application, the authority—

- (a) *must comply with any relevant EPP requirement; and*
- (b) *subject to paragraph (a), must consider the following—*
 - (i) *the standard criteria;*
 - (ii) *additional information given in relation to the application;*
 - (iii) *any suitability report obtained for the application;*
 - (iv) *any properly made submission for the application;*
 - (v) *the views expressed at a conference held in relation to the application.*¹⁶⁸

'Information notice about decision on conversion application

'34DH.(1)¹⁶⁹ The administering authority must, within 10 days after making a decision as follows, give the applicant an information notice about the decision—

- (a) *a decision to refuse a conversion application;*
- (b) *a decision under section 34DE(3) to impose a condition on a*

¹⁶⁸ The text in italics commenced on 1 January 2001 and is included here for information purposes only.

¹⁶⁹ Section 34DH renumbered as section 115—see table of renumbered provisions in endnote 9.

level 1 approval, other than a condition that is the same, or is to the same effect, as a condition agreed to or requested by the applicant.

‘(2) If a conversion application relates to a licence (without development approval) and the authority decides to grant the application, it must, within 10 days after making the decision, give any submitter for the application an information notice about the decision.¹⁷⁰

‘Public notice may be required for licence amendment

‘34DK.(1) This section applies only if an amendment application relates to a licence.

‘(2) The administering authority may, within 5 days after the application date, by written notice to the applicant, decide that sections 34CB to 34CH apply for the application (a “**public notice requirement**”).

‘(3) However, a public notice requirement must not be made unless the administering authority is satisfied there is likely to be a substantial increase in the risk of environmental harm under the amended licence because of a substantial change in—

- (a) the quantity or quality of contaminant authorised to be released into the environment; or
- (b) the results of the release of a quantity or quality of contaminant authorised to be released into the environment.

‘(4) Without limiting subsection (3)(a), an increase of 10% or more in the quantity of a contaminant to be released into the environment is a substantial change.

‘(5) The notice must be accompanied by, or include, an information notice about the decision.

‘(6) If a public notice requirement has been made, sections 34CB to 34CH apply for the application, with necessary changes, as if the application were a licence application under part 3, division 2, subdivision 1.

¹⁷⁰ The text in italics commenced on 1 January 2001 and is included here for information purposes only.

‘(7) However, for applying section 34CC, the reference to 2 days after the application date is taken to be 10 days after the application date.’¹⁷¹

‘Deciding application

‘**34DL.**¹⁷² *The administering authority must consider and decide either to grant or refuse each amendment application within the later of the following—*

- (a) *28 days after the application date;*
- (b) *if a public notice requirement has been made for the application—*
 - (i) *28 days after the authority receives the declaration of compliance under section 34CE; or*
 - (ii) *10 days after the submission period ends.*¹⁷³

‘Steps after making decision

‘**34DO.(1)**¹⁷⁴ *If the administering authority decides to grant an amendment application, it must do the following within 10 days after the decision is made—*

- (a) *amend the licence or level 1 approval to give effect to the amendment;*
- (b) *record particulars of the amendment in the appropriate register;*
- (c) *give the applicant a copy of the amended licence or level 1 approval;*
- (d) *give any submitter for the application an information notice about the decision.*

¹⁷¹ Part 3, division 2, subdivision 1 (General provisions for obtaining licence)
Section 34CC (Public notice of application)

¹⁷² Section 34DL renumbered as section 118—see table of renumbered provisions in endnote 9.

¹⁷³ The text in italics commenced on 1 January 2001 and is included here for information purposes only.

¹⁷⁴ Section 34DO renumbered as section 121—see table of renumbered provisions in endnote 9.

‘(2) If the authority decides to refuse an amendment application, it must within 10 days after the decision is made, give the applicant and any submitter for the application an information notice about the decision.’¹⁷⁵

‘When amendment takes effect

‘34DP.’¹⁷⁶ *An amendment made under section 34DO(1)(a) takes effect on the later of the following—*

- (a) the day the amendment is made;*
- (b) a later day stated in the amended licence or level 1 approval;*
- (c) if a public notice requirement has been made for the application and a properly made submission was made about the application—the day after the review date;*
- (d) another day agreed to by the holder of the licence or level 1 approval.’*¹⁷⁷

‘Administering authority may call conference

‘34EH.(1) The administering authority may invite an applicant under this chapter and all or any submitters for the application to a conference to help it in deciding the application.

‘(2) The authority must give written notice to all persons invited to attend the conference of when and where the conference is to be held.

‘(3) However, if the authority considers it is impracticable to give notice to all persons invited to attend the conference, it may give notice of the conference by publishing a notice in the newspapers the authority decides.

‘(4) The authority must endeavour to appoint an independent person to mediate the conference.

¹⁷⁵ The text in italics commenced on 1 January 2001 and is included here for information purposes only.

¹⁷⁶ Section 34DP renumbered as section 122—see table of renumbered provisions in endnote 9.

¹⁷⁷ The text in italics commenced on 1 January 2001 and is included here for information purposes only.

Amendment of s 200 (Dissatisfied person)

37.(5) Section 200,¹⁷⁸ after subsection (1)(l)—

omit, insert—

‘(2) A submitter for an application is also a “dissatisfied person” if the decision is about—

- (a) a licence application under chapter 2B, part 3, division 2, subdivision 1; or
- (b) an amendment application under chapter 2B, part 5 for which a public notice requirement has been made; or
- (c) *the submission of an environmental management program to which section 335 applies.*^{179’, 180}

Insertion of new ss 219AA–219BE

46. After section 219¹⁸¹—

insert—

¹⁷⁸ Section 200 renumbered as section 519—see table of renumbered provisions in endnote 9.

¹⁷⁹ Sections 378 (Waiver of requirement to conduct or commission site investigation), 385 (Administering authority may require another report or additional information), 392 (Waiver of requirement to remediate land), 413 (Approval of draft site management plan), 407 (Waver of requirement to prepare or commission site management plan) and 335 (Public notice of submission for approval of certain draft programs)
Chapter 2A (renumbered as chapter 3), part 1 (EIS process)
Chapter 2C (renumbered as chapter 5), parts 9 (Transfer of authorities) and 11 (Environmental audits for mining activities)
Chapter 2B (renumbered as chapter 4), part 3, division 2, subdivision 1 (General provisions for obtaining licence)
Chapter 2B (renumbered as chapter 4), part 5 (Amending environmental authorities by application)

¹⁸⁰ The text in italics commenced on 1 January 2001 and is included here for information purposes only.

¹⁸¹ Section 219 renumbered as section 548—see table of renumbered provisions in endnote 9.

‘Extension of decision period

‘219AG.(1) This section applies if the administering authority is deciding, or is required to decide, an application for, an environmental authority or an EMP submission.

‘(2) The authority may extend the required period to make the decision if, before the extension starts, it gives the applicant and any submitters for the application an information notice about the decision to extend.¹⁸²

Replacement of sch 1 (Original decisions)

53. Schedule 1—

insert—

***‘PART 2—ORIGINAL DECISIONS FOR COURT
APPEALS***

‘Division 1—Decisions under chapter 2B¹⁸³

‘Section	Description of decision
34CF(1) and (2)	Decision not to allow application to proceed
34CF(3)(b)(i)	Fixing of a new notice or submission period

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¹⁸² The text in italics commenced on 1 January 2001 and is included here for information purposes only.

¹⁸³ The text in italics commenced on 1 January 2001 and is included here for information purposes only.