



Queensland

Environmental Protection and Other Legislation Amendment Act 2005

Act No. 53 of 2005



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Queensland

Environmental Protection and Other Legislation Amendment Act 2005

Act No. 53 of 2005

**An Act to amend the *Environmental Protection Act 1994*, and
for other purposes**

[Assented to 18 November 2005]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Environmental Protection and Other Legislation Amendment Act 2005*.

2 Commencement

Part 4 and sections 8, 101, 106(2) and 107 to 111 commence on a day to be fixed by proclamation.

Part 2 Amendment of Brisbane Forest Park Act 1977

3 Act amended in pt 2

This part amends the *Brisbane Forest Park Act 1977*.

4 Insertion of new s 36A

Part 5, division 3, before section 37—

insert—

‘36A Delegation by administering authority

‘(1) The administering authority may delegate its powers under this Act, other than sections 30 and 35,¹ to an appropriately qualified authorised officer or public service officer.

1 Sections 30 (Allocation of land for public use) and 35 (By-laws of administration authority)

8 **Amendment of s 103 (Application of pt 6)**

Section 103, after ‘application.’—

insert—

‘*Note—*

- 1 Under the *Integrated Planning Act 1997*, schedule 8, part 1, table 4, operational work that is tidal works is assessable development under that Act.
- 2 Under chapter 4, part 3, division 1, of that Act there are offences relating to the carrying out of assessable development.
- 3 However, under section 4.3.6A of that Act, there is an exemption to the development offences under sections 4.3.1, 4.3.3, 4.3.4 and 4.3.5 of that Act for the carrying out of tidal works in an emergency if the requirements of section 4.3.6A are complied with.’

9 **Replacement of s 124 (Obligation to keep certain tidal works in safe condition)**

Section 124—

omit, insert—

‘124 **Obligation to keep particular tidal works in safe condition**

- ‘(1) This section applies to a structure for which—
- (a) under the *Integrated Planning Act 1997*, a development permit is or was required for operational work that is tidal works; or
 - (b) there is a sanction or authorisation mentioned in section 171 that, under that section, has (together with any of its conditions) effect as if it were a development approval for operational work that is tidal works.
- ‘(2) The following persons must ensure the structure is maintained in a safe condition—
- (a) a person who is an owner of freehold land, or a lessee of land leased from the State, if the land—
 - (i) is above high water mark; and
 - (ii) is connected to, or receives the benefit of, the structure that is tidal works;

- (b) any one else, including, for example, a local government acting as a trustee, who is responsible—
 - (i) under any law or contract or other agreement to ensure the tidal works are in a safe condition; or
 - (ii) for any wrong arising out of a failure to ensure the tidal works are in a safe condition.
- ‘(3) Subsection (2) does not affect or limit a civil right or remedy that exists apart from this Act, whether at common law or otherwise.
- ‘(4) Without limiting subsection (3), compliance with subsection (2) does not necessarily show that a civil obligation that exists apart from this Act has been satisfied or has not been breached.
- ‘(5) In addition, a breach of an obligation under subsection (2) does not, of itself, give rise to an action for breach of statutory duty or another civil right or remedy.

Note—

For the consequences of a failure to comply with the obligation under subsection (2), see part 3, division 2.³⁷.

10 **Amendment of s 145 (Proceedings for indictable offences)**

Section 145(4), ‘165 penalty units’—

omit, insert—

‘1665 penalty units’.

11 **Amendment of schedule (Dictionary)**

- (1) Schedule, definition *tidal works*, paragraph 3—
renumber as paragraph 4.
- (2) Schedule, definition *tidal works*, paragraph 2A—
omit, insert—

³ Part 3, division 2 (Coastal protection and tidal works notices)

‘3 *Tidal works* also includes—

- (a) works designed to be exposed to tidal water because of shoreline fluctuations; and
- (b) works within the boundaries of a canal, whether above or below high water mark.’.

(3) Schedule, definition *tidal works*, item 4(c), as renumbered, ‘schedule 8, part 1, table 4, item 5(b)’—

omit, insert—

‘the *Integrated Planning Act 1997*, schedule 8, part 1, table 4, item 5(b)’.

Part 4 Amendment of Environmental Protection Act 1994

12 Act amended in pt 4 and schedule

- (1) This part amends the *Environmental Protection Act 1994*.
- (2) The schedule also includes amendments of that Act.

13 Replacement of s 26 (Preparation of draft policies)

Section 26—

omit, insert—

‘26 Minister may make policies

‘The Minister may make environmental protection policies to enhance or protect Queensland’s environment.’.

14 Omission of ss 29 to 32

Sections 29 to 32—

omit.

15 Amendment of s 33 (Approval of final policy)

- (1) Section 33, heading—

omit, insert—

‘33 Policies are subordinate legislation’.

- (2) Section 33, ‘A final’—

omit, insert—

‘An’.

- (3) Section 33(2)—

omit.

16 Omission of ss 35 and 36

Sections 35 and 36—

omit.

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

- (1) Section 49(1), ‘divisions 4 to 6’—

omit, insert—

‘division 4’.

- (2) Section 49(3), ‘the submission period for the EIS’—

omit, insert—

‘a minimum period for the making of submissions about the EIS’.

- (3) Section 49(4), ‘20 business days’—

omit, insert—

‘30 business days’.

18 Amendment of s 50 (Ministerial review of refusal to allow to proceed)

- (1) Section 50(4)(b), ‘divisions 4 to 6’—

omit, insert—

‘division 4’.

- (2) Section 50(5) and (6)—

omit, insert—

- ‘(5) The Minister’s decision on the review is taken for this part, other than section 49(6), to be the chief executive’s decision.
- ‘(6) The chief executive must give the proponent written notice of the Minister’s decision within 10 business days after it is made.
- ‘(7) If the Minister’s decision is to confirm the chief executive’s decision, the notice must state reasons for the Minister’s decision.’.

19 Amendment of s 51 (Public notification)

Section 51(1), ‘and divisions 5 and 6’—

omit.

20 Amendment of s 52 (Required content of EIS notice)

- (1) Section 52(2), ‘20 business days’—

omit, insert—

‘30 business days’.

- (2) Section 52(2)(a), ‘submission period’—

omit, insert—

‘minimum period for the making of submissions about the EIS’.

21 Amendment of s 56 (Response to submissions)

- (1) Section 56(2)(c)—

omit, insert—

‘(c) any amendments of the submitted EIS because of the submissions, together with an EIS amendment notice under section 66 for the amendments.’

(2) Section 56(3), definition *relevant period*—
omit, insert—

‘*relevant period* means—

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

22 Insertion of new ss 56A and 56B

Chapter 3, part 1, division 4, subdivision 2, after section 56—
insert—

‘56A Assessment of adequacy of response to submission and submitted EIS

- ‘(1) This section applies only if, under section 55, a submission has been accepted by the chief executive.
- ‘(2) The chief executive must, within 20 business days after the relevant period under section 56—
 - (a) consider the submitted EIS and the documents given under section 56(2); and
 - (b) decide whether to allow the submitted EIS to proceed under divisions 5 and 6.
- ‘(3) The chief executive may allow the submitted EIS to proceed only if the chief executive considers—
 - (a) the proponent’s response to the submission is adequate; and
 - (b) the proponent has made all appropriate amendments to the submitted EIS because of the submission.

- ‘(4) The chief executive must, within 10 business days after the decision is made, give the proponent written notice of the decision.
- ‘(5) If the decision is to refuse to allow the submitted EIS to proceed, the notice must also state—
 - (a) the reasons for the decision; and
 - (b) that the proponent may, under section 56B, apply to the Minister to review the decision; and
 - (c) how to apply for a review.

‘56B Ministerial review of refusal to allow submitted EIS to proceed

- ‘(1) If, under section 56A, the chief executive decides to refuse to allow the submitted EIS to proceed, the proponent may, by written notice, apply to the Minister to review the decision.
- ‘(2) Section 50 applies to the notice and the review as if—
 - (a) they were a notice and review under that section; and
 - (b) the reference to division 4 in section 50(4)(b) were a reference to divisions 5 and 6; and
 - (c) the reference to section 49(6) in section 50(2)(b) were a reference to section 56A(4).’.

23 Replacement of s 57 (EIS assessment report)

Section 57—

omit, insert—

‘57 EIS assessment report

- ‘(1) This section applies only if the chief executive has given the proponent a notice under section 56A(4), or under 50(6) as applied by section 56B(2), of a decision that the submitted EIS may proceed under this division and division 6.
- ‘(2) The chief executive must give the proponent a report (an *EIS assessment report*) about the submitted EIS within 30 business days after—

- (a) if, at the end of the submission period, the chief executive has accepted any submissions—the end of the relevant period under section 56; or
- (b) if, under section 56A, the chief executive originally decided to refuse to allow the submitted EIS to proceed but, under section 56B, the Minister decided to allow it to proceed—the giving to the proponent of notice of the Minister’s decision; or
- (c) otherwise—the end of the submission period.⁴.

24 Amendment of s 62 (Chief executive may seek advice, comment or information)

Section 62—

insert—

- ‘(3) If the request is made of the proponent, it must be written, and must state a reasonable period for the giving of the advice, comment or information sought.’

25 Amendment of s 64 (Inquiry does not alter process)

- (1) Section 64, heading—

omit, insert—

‘64 Making of inquiry does not of itself alter EIS process’.

- (2) Section 64—

insert—

- ‘(c) affect or limit a provision of divisions 2 to 6 that allows the chief executive and the proponent to agree about the period for the taking of a step under the EIS process.

Note—

For the consequences of not giving advice, comment or information required under section 62, see section 67.’.

⁴ For public inspection of the EIS assessment report, see sections 540 (Required registers) and 542 (Inspection of register).

26 Amendment of s 66 (Amending EIS)

Section 66(1), from ‘(the *original EIS*)’ to ‘otherwise—’—
omit, insert—
‘(the *original EIS*)’.

27 Amendment of s 73G (When registration certificate takes effect)

- (1) Section 73G(1), ‘subsection (2)’—
omit, insert—
‘subsections (2) and (3)’.
- (2) Section 73G(1)(a) and (b)—
omit, insert—
‘(a) if the certificate states a day or the happening of an event for it to take effect—the stated day or the happening of the event; or
(b) if no day or event is stated under paragraph (a)—the day the certificate is given; or’.
- (3) Section 73G—
insert—
‘(3) If a chapter 4 activity the subject of a registration certificate is assessable development, the certificate does not take effect for the activity until a development permit for the activity takes effect.’.

28 Amendment of s 77 (What is a *petroleum activity*, a *level 1 petroleum activity* and a *level 2 petroleum activity*)

Section 77(1)(c), ‘exploring for or mining minerals’—
omit, insert—
‘exploring for, exploiting or conveying petroleum resources’.

29 Amendment of s 86 (Joint application may be made)

Section 86(2), after ‘joint applicants’—

insert—

‘only if the applications relate to different petroleum projects’.

30 Amendment of s 92 (Steps after granting application and the giving of financial assurance)

Section 92(1)—

omit, insert—

- ‘(1) If the administering authority decides to grant the application, it must, within 8 business days after the decision is made, take the steps mentioned in subsection (3).’.

31 Insertion of new s 95A

After section 95—

insert—

‘95A Conditions may be requested

- ‘(1) The applicant may ask the administering authority to impose a particular condition on the environmental authority (petroleum activities) applied for if the condition—
- (a) may be imposed under section 98; and
 - (b) is not inconsistent with a condition that must be imposed under section 98.
- ‘(2) The request must be—
- (a) made in the application or, if the request is made after the application is made, in the approved form for the request; and
 - (b) supported by enough information to allow the authority to decide whether to impose the condition; and
 - (c) accompanied by the fee prescribed under a regulation.
- ‘(3) The fee under subsection (2)(c) is in addition to the application fee.’.

32 Amendment of s 97 (Criteria for decision)

- (1) Section 97, after ‘refuse the application’—
insert—
‘or to impose a condition under section 98’.
- (2) Section 97(b)(v)—
omit.
- (3) Section 97(b)(vi) and (vii)—
renumber as section 97(b)(v) and (vi).

33 Amendment of s 98 (Conditions that may and must be imposed)

Section 98—

insert—

- ‘(6) A condition may be imposed even if the applicant did not ask for it under section 95A.’.

34 Amendment of s 99 (Steps after granting application and the giving of financial assurance)

Section 99(1)—

omit, insert—

- ‘(1) If the administering authority decides to grant the application, it must, within 8 business days after the decision is made, take the steps mentioned in subsection (3).’.

35 Amendment of s 103 (Environmental management plan)

Section 103—

insert—

- ‘(3) The environmental protection commitments must include a rehabilitation program for land proposed to be disturbed under each relevant petroleum authority for the application.
- ‘(4) The rehabilitation program must state a proposed amount of financial assurance for the environmental authority.’.

36 Amendment of s 115 (Steps after granting application and the giving of financial assurance)

Section 115(1)—

omit, insert—

- ‘(1) If the administering authority decides to grant the application, it must, within 8 business days after the decision is made, take the steps mentioned in subsection (3).’.

37 Amendment of s 122 (Public notice may be required)

- (1) Section 122, heading, after ‘required’—

insert—

‘if application is for level 1 petroleum activity’.

- (2) Section 122(1) to (4)—

renumber as section 122(2) to (5).

- (3) Section 122—

insert—

- ‘(1) This section applies for an amendment application only if it is for an environmental authority (petroleum activities) for a level 1 petroleum activity.’.

- (4) Section 122(2), as renumbered, ‘an amendment application’—

omit, insert—

‘the application’.

- (5) Section 122(4), as renumbered, ‘subsection (2)(a)’—

omit, insert—

‘subsection (3)(a)’.

38 Replacement of s 129 (Transfer only by approval)

Section 129—

omit, insert—

‘129 Transfer only by approval

- ‘(1) Subsections (2) to (5) apply to the following transfers—
- (a) a transfer of an environmental authority (petroleum activities);
 - (b) a transfer of an application for an environmental authority (petroleum activities).
- ‘(2) The transfer may be made 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.
- ‘(3) To remove any doubt, it is declared that a transfer application may be made, and a transfer may be approved, for a transfer from joint holders of an environmental authority (petroleum activities) under which 1 or more of the joint holders will continue to hold the environmental authority.
- ‘(4) A transfer application may be made under which—
- (a) the proposed transferor seeks to divide an environmental authority (petroleum activities) held by the proposed transferor into 2 or more environmental authorities (petroleum activities); and
 - (b) the proposed transferor will remain the holder of one or more of the environmental authorities or an interest in them and transfer the rest to the proposed transferee.
- ‘(5) Sections 130 to 136 apply for a transfer application for an application for an environmental authority (petroleum activities)—
- (a) as if a reference otherwise to a holder of the environmental authority were a reference to the applicant for the authority; and
 - (b) as if a reference to the environmental authority were a reference to the environmental authority applied for.
- ‘(6) In this section—
- transfer*, of an application for an environmental authority (petroleum activities), includes amending the application so

that someone other than the current applicant becomes an applicant.’.

39 Amendment of s 133 (Audit statement may be required)

(1) Section 133(2)—

insert—

‘(c) state whether or not the amount of financial assurance currently given, or proposed to be given for the transferred environmental authority, has been worked out in a way acceptable to the administering authority.’.

(2) Section 133—

insert—

‘(3) For subsection (2)(c), an amount of financial assurance is taken to have been worked out in a way acceptable to the administering authority if it is worked out in the way provided for in a relevant guideline, policy or rule published by the administering authority.’.

40 Amendment of s 134 (Deciding application)

Section 134(2)—

omit, insert—

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

(a) the status of any application under the petroleum legislation for the transfer to the proposed transferee of any relevant petroleum authority for the environmental authority; and

(b) any suitability report obtained for the application.’.

41 Amendment of s 136 (Steps after making decision)

(1) Section 136(1), after ‘approve a transfer’—

insert—

‘, other than of a type mentioned in section 129(4)’.

- (2) Section 136(2) and (3)—
renumber as section 136(3) and (4).
- (3) Section 136—
insert—
- ‘(2) If the administering authority decides to approve a transfer of a type mentioned in section 129(4), it must, within 8 business days after the decision is made—
 - (a) divide the environmental authority as provided for in the approval; and
 - (b) record particulars of the division in the appropriate register; and
 - (c) give the transferee a copy of each environmental authority of which, under the approval, the transferee is to become the holder.’.
- (4) Section 136(3), as renumbered, ‘subsection (1) does’—
omit, insert—
‘subsections (1) and (2) do’.

42 Amendment of s 139 (When surrender application required)

- (1) Section 139(2), ‘before the 90 days’—
omit, insert—
‘within the 90 days’.
- (2) Section 139(3) and (4)—
omit, insert—
- ‘(3) A surrender application under subsection (1) must be for the environmental authority to the extent it relates to the relevant petroleum authority cancelled, expired or affected by a relinquishment, reduction in area or partial surrender.’.

43 Amendment of s 145F (Conditions for cancellation or suspension)

Section 145F(2)(b), ‘change or replenish’—

omit, insert—

‘give, change or replenish’.

44 Replacement of s 145P (Power to require change to financial assurance)

Section 145P—

omit, insert—

‘145P Power to require financial assurance if not previously required or to require a change to financial assurance

- ‘(1) The administering authority may, by complying with subsections (4) to (6), require the holder of an environmental authority (petroleum activities) to—
- (a) if financial assurance has not been given for the environmental authority—give financial assurance in a stated form or amount as security for the matters mentioned in section 145O(2); or
 - (b) if financial assurance has been given for the environmental authority—change the financial assurance.
- ‘(2) The requirement may be made at any time.
- ‘(3) However, the requirement may be made only if the administering authority is satisfied it is justified having regard to the matters mentioned in section 145O(3).
- ‘(4) The administering authority must give the holder a notice—
- (a) stating the proposed financial assurance or change to financial assurance; and
 - (b) inviting the holder to make, within a stated period, submissions about the proposal.
- ‘(5) The stated period must end at least 20 business days after the holder is given the notice.

- ‘(6) The administering authority must, before deciding to make the requirement, consider any written submissions by the holder given within the stated period.
- ‘(7) The requirement does not take effect until the holder is given an information notice about the decision or, if the notice states a later day of effect, on that later day.
- ‘(8) In this section—
- change*, financial assurance, includes to decrease or increase its amount or replace it.
- financial assurance*, given, includes financial assurance changed because of a requirement previously made under subsection (1)(b).’.

45 Amendment of s 148 (Types of *environmental authority* (*mining activities*))

Section 148(3)—

omit, insert—

- ‘(3) A *code compliant authority* is an environmental authority (mining activities) that, under section 164 or 168, is taken to have been issued.⁵’.

46 Amendment of s 154 (General requirements for application)

- (1) Section 154(1)(a), after ‘; and’—

insert—

‘*Note—*

Because of different assessment processes, there may be different approved forms for applying for level 1 mining projects and level 2 mining projects.’.

- (2) Section 154(4), ‘non-code compliant authority’—

5 Section 164 (Automatic issuing of code compliant authority if no relevant mining claim or mining lease) or 168 (Automatic issuing of code compliant authority in particular circumstances)

See also section 603B(2) (Automatic conversion for particular applications).

omit, insert—

‘code compliant authority’.

47 Amendment of s 162 (Decision about EIS requirement)

(1) Section 162(3) and (4)—

renumber as section 162(4) and (5).

(2) Section 162—

insert—

‘(3) However, an EIS must not be required for the application if—

(a) it is for an environmental authority (mining lease); and

(b) a relevant mining lease is, or is included in, a significant project.⁶.

(3) Section 162(5), as renumbered, definition *required period*, paragraph (b), ‘EPA Minister’—

omit, insert—

‘administering authority’.

48 Amendment of s 163 (Minister’s power to overturn decision about EIS requirement)

(1) Section 163(1) to (3)—

renumber as section 163(2) to (4).

(2) Section 163—

insert—

‘(1) This section does not apply for an application if—

(a) it is for an environmental authority (mining lease); and

(b) a relevant mining lease is, or is included in, a significant project.’.

⁶ For EISs for significant projects, see the State Development Act, section 29D (Application of divs 3–6) and part 4, division 3 (EIS process).

49 Amendment of s 167 (Modified application of pt 6, divs 6 to 8)

Section 167(1)—

omit, insert—

- ‘(1) Part 6, divisions 6 to 8, other than sections 226 to 228, apply—
- (a) as if the application were an application for a level 1 mining project; and
 - (b) subject to sections 168 to 168B; and
 - (c) with other necessary changes.’.

50 Replacement of s 168 (Non-code compliant application fee must be paid if decision is to grant non-code compliant authority)

Section 168—

omit, insert—

‘168 Automatic issuing of code compliant authority in particular circumstances

- ‘(1) If, under part 6, division 7, subdivision 1 (as applied under section 167), the Minister’s decision is to grant the application on the basis of the draft environmental authority for the application, the code compliant authority applied for is taken to have been issued when the decision was made.
- ‘(2) If, at the end of the objections period for the application there is no current objection relating to the application, the code compliant authority applied for is taken to have been issued when that period ended.
- ‘(3) If the applicant gives the administering authority a written notice stating there are no longer any current objections relating to the application, the code compliant authority applied for is taken to have been issued when the administering authority received the notice.

‘168A Conditions of code compliant authority

- ‘(1) This section applies if, under section 168, a code compliant authority is taken to have been issued.
- ‘(2) The relevant standard environmental conditions for the authority are taken to be conditions of the authority.⁷
- ‘(3) While the authority continues to be a code compliant authority, the relevant standard environmental conditions are the only conditions of the authority.⁸

‘168B Provisions for grant of application if Minister’s decision is to grant on different conditions

- ‘(1) This section applies for the application if under part 6, division 7, subdivision 1 (as applied under section 167), the Minister’s decision is to grant the application on conditions that are different to the conditions in the draft environmental authority for the application.
- ‘(2) The administering authority must, within 10 business days after the last of the following to happen, issue the environmental authority in the approved form—
 - (a) the making of the decision;
 - (b) payment by the applicant of the amount of the application fee for a non-code compliant application.
- ‘(3) The environmental authority must state its conditions in a way that reflects the Minister’s decision.
- ‘(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 last of the following events to happen—
 - (a) the making of the decision;
 - (b) the granting of each relevant mining tenement for the application.

7 See however section 550 (Effect of changes to standard environmental conditions).

8 For when a code compliant authority becomes a non-code compliant authority, see section 148 (Types of *environmental authority (mining activities)*).

- ‘(5) The administering authority must also record in the register that the conditions of the environmental authority were decided by the Minister.’.

51 Amendment of s 171C (Notice about refusal or condition decision)

Section 171C(2)(b), before ‘that the decision’—

insert—

‘if the decision is to refuse the application—’.

52 Amendment of s 171D (Modified application of pt 6, divs 5 to 8)

- (1) Section 171D, heading, ‘divs 5 to 8’—

omit, insert—

‘**divs 4 to 8**’.

- (2) Section 171D(2), ‘Part 6, divisions 5 to 8 apply’—

omit, insert—

‘Subject to section 171DA, part 6, divisions 4 to 8 apply’.

53 Insertion of new s 171DA

Chapter 5, part 3, division 2, subdivision 2—

insert—

‘171DA Inclusion of additional conditions in draft environmental authority

- ‘(1) This section applies for the inclusion of proposed conditions in a draft environmental authority for an application mentioned in section 171D.
- ‘(2) To remove any doubt, it is declared that a condition (an *additional condition*) may be included even if it is not a relevant standard environmental condition for the environmental authority.

- ‘(3) The applicant may, within 5 business days after the administering authority receives the application, ask it to include an additional condition.
- ‘(4) The request must be—
 - (a) made in the application or, if the request is made after the application is made, in the approved form for the request; and
 - (b) supported by enough information to allow the administering authority to decide whether to include the additional condition; and
 - (c) accompanied by the fee prescribed under a regulation.
- ‘(5) The fee under subsection (4)(c) is in addition to the application fee.
- ‘(6) An additional condition may be included even if the applicant did not ask for it.’.

54 Omission of s 185 (Application of div 3)

Section 185—

omit.

55 Amendment of s 203 (Content requirements for submitted EM plan)

- (1) Section 203(2)(c), after ‘continuous improvement’—

insert—

‘Example—

revision, as a result of ongoing assessment of monitoring and research trials, of the indicators and completion criteria for rehabilitation stated in the environmental authority’.

- (2) Section 203—

insert—

- ‘(3) The environmental protection objectives mentioned in subsection (2)(b) must—

- (a) include specific rehabilitation objectives; and
 - (b) identify the indicators that will be measured to establish when rehabilitation is, by reference to specific completion criteria, complete.
- ‘(4) The indicators mentioned in subsection (3)(b) may be different for different parts of the land that have different types of disturbance.’.

56 Amendment of s 210 (Conditions that may and must be included in draft environmental authority)

Section 210—

insert—

- ‘(4) Subject to subsection (3), the proposed conditions must include conditions about rehabilitation objectives, indicators and completion criteria.’.

57 Amendment of s 226 (Grant of application)

(1) Section 226(3)—

omit, insert—

- ‘(3) The environmental authority must state its conditions in a way that reflects the Minister’s decision.’.

(2) Section 226—

insert—

- ‘(5) The administering authority must also record in the register that the conditions of the environmental authority were decided by the Minister.’.

58 Insertion of new s 226A

Chapter 5, part 6, division 7, subdivision 1—

insert—

‘226A Submitted EM plan may be amended if conditions of environmental authority are different to draft

- ‘(1) This section applies if the conditions of an environmental authority granted under section 226 are different to the conditions in the draft environmental authority for the application.
- ‘(2) The environmental authority holder may submit an amended version of the submitted EM plan for the application.
- ‘(3) However, the amendments in the amended version—
 - (a) can only be amendments that are necessary to ensure the submitted EM plan for the environmental authority is consistent with the conditions of the authority; and
 - (b) must comply with the requirements that apply under section 203 for a submitted EM plan.’.

59 Amendment of s 238 (Who may apply)

Section 238—

insert—

- ‘(2) An amendment application may be made under which the holder of 2 or more environmental authorities (mining activities) seeks a new project authority for all mining activities for the authorities.
- ‘(3) Subject to subsection (6), the new project authority sought under subsection (2) must contain all conditions (the ***existing conditions***) of the environmental authorities.
- ‘(4) Also, an amendment application may be made under which the holder of an existing project authority seeks—
 - (a) removal of a particular relevant mining tenement from the project authority; and
 - (b) a new environmental authority (mining activities) for the tenement.
- ‘(5) Subject to subsection (6), the new environmental authority sought under subsection (4) must contain all conditions (also the ***existing conditions***) of the project authority.

- ‘(6) An application under subsection (2) or (4) may seek, for the issue of the new authority, amendments to the existing conditions that—
- (a) remove inconsistencies; or
 - (b) address changes in activities that will be authorised under the authority.
- ‘(7) Subsections (2) to (6) do not limit subsection (1).’.

60 Amendment of s 246 (Assessment level and EIS decisions for application)

Section 246(2), after ‘standard criteria’—
insert—
‘and whether section 247A applies’.

61 Amendment of s 247 (Ministerial decision about assessment level and EIS decisions)

Section 247(7), after ‘standard criteria’—
insert—
‘and whether section 247A applies’.

62 Replacement of s 247A (Criteria for making assessment level decision)

Section 247A—
omit, insert—

‘247A Significant increase must be decided in particular cases

- ‘(1) This section applies if—
- (a) the application relates to a new relevant mining lease or mining claim for the environmental authority; or
 - (b) the application relates to an addition to the surface area of a relevant mining lease for the environmental authority; or

- (c) the application relates to a change to the rehabilitation objectives that is likely to result in significantly different impacts on environmental values than the impacts previously authorised under the environmental authority.
- ‘(2) The administering authority or EPA Minister must, despite sections 246 and 247, decide that the level of environmental harm caused by any relevant mining activity is likely to be significantly increased.’.

63 Amendment of s 251 (Relevant application process applies)

Section 251(1), ‘part 5, division 3, subdivisions 3 and 4, apply’—

omit, insert—

‘part 5 applies’.

64 Amendment of s 254 (Public notice of application)

(1) Section 254(1)—

omit, insert—

- ‘(1) This section, and not section 211,⁹ applies for publication of the application notice for an amendment application for an environmental authority (mining lease) if there is no certificate of public notice under the Mineral Resources Act, section 64B or 252B,¹⁰ for a relevant mining lease or mining claim for the amendment application.’.

(2) Section 254(2)(a)—

omit, insert—

‘(a) give the application notice to—

⁹ Section 211 (Public notice of application)

¹⁰ Mineral Resources Act, section 64B and 252B (Applicant’s obligations for certificate of public notice)

- (i) each owner of land to which the amendment relates (the *relevant land*) and any other land necessary for access to the relevant land; and
 - (ii) each holder, or applicant for, an exploration permit or mineral development licence over the relevant land for a mineral other than a mineral to which the proposed amendment relates; and
 - (iii) the relevant local government.’.
- (3) Section 254(4)—
omit.

65 Amendment of s 255 (Objection period)

- (1) Section 255(1) and (2)—
renumber as section 255(2) and (3).
- (2) Section 255—
insert—
- ‘(1) This section applies only if there is no certificate of public notice under the Mineral Resources Act, section 64B or 252B, for a relevant mining lease or mining claim for the amendment application.’.

66 Replacement of s 259 (Transfer only by approval)

Section 259—
omit, insert—

‘259 Transfer only by approval

- ‘(1) This section applies to the following transfers—
- (a) the transfer of an environmental authority (mining activities) to a person who does not already hold the environmental authority;
 - (b) a transfer of an application for an environmental authority (mining lease).
- ‘(2) The transfer may be made 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.
- ‘(3) To remove any doubt, it is declared that a transfer application may be made, and a transfer may be approved, for a transfer from joint holders of an environmental authority (mining activities) under which 1 or more of the joint holders will continue to hold the environmental authority.
- ‘(4) A transfer application may be made under which—
- (a) the proposed transferor seeks to divide an environmental authority (mining activities) held by the proposed transferor into 2 or more environmental authorities (mining activities); and
 - (b) the proposed transferor will remain the holder of one or more of the environmental authorities or an interest in them and transfer the rest to the proposed transferee.
- ‘(5) Despite subsections (1) to (4)—
- (a) an environmental authority (prospecting) can not be transferred; and
 - (b) a transfer application of a type mentioned in subsection (4) can not be made for an environmental authority (prospecting).
- ‘(6) A transfer application can not be made for an application for an environmental authority (mining activities) other than an an environmental authority (mining lease).
- ‘(7) Sections 260 to 266 apply for a transfer application for an application for an environmental authority (mining lease)—
- (a) as if a reference otherwise to a holder of the environmental authority were a reference to the applicant for the authority; and
 - (b) as if a reference otherwise to the environmental authority were a reference to the environmental authority applied for.
- ‘(8) In this section—

transfer, of an application for an environmental authority (mining lease), includes amending the application so that someone other than the current applicant becomes an applicant.’.

67 Amendment of s 260 (General requirements for transfer application)

Section 260(4), ‘granted’, second mention—

omit, insert—

‘approved’.

68 Amendment of s 261 (Audit statement may be required)

(1) Section 261(2)—

insert—

‘(c) state whether or not the amount of financial assurance currently given, or proposed to be given for the transferred environmental authority, has been worked out in a way acceptable to the administering authority.’.

(2) Section 261—

insert—

‘(3) For subsection (2)(c), an amount of financial assurance is taken to have been worked out in a way acceptable to the administering authority if it is worked out in the way provided for in a relevant guideline, policy or rule published by the administering authority.’.

69 Amendment of s 264 (Steps after making decision)

(1) Section 264(1), after ‘approve a transfer’—

insert—

‘other than of a type mentioned in section 259(4)’.

(2) Section 264(2)—

renumber as section 264(3).

(3) Section 264—

insert—

- ‘(2) If the administering authority decides to approve a transfer of a type mentioned in section 259(4), it must—
- (a) divide the relevant environmental authority as provided for in the approval within 10 business days after the decision is made; and
 - (b) record particulars of the division in the appropriate register within 10 business days after the last of the following events to happen—
 - (i) the making of the decision;
 - (ii) the transferee becomes the holder of each relevant mining tenement for each environmental authority (a *transferred authority*) of which, under the approval, the transferee is to become the holder;
 - (iii) if a person, other than the transferee, holds a relevant mining tenement for a transferred authority—the person ceases to be a holder of the tenement; and
 - (c) give the transferee a copy of each transferred authority of which they are a holder.’

70 Insertion of new ch 5, pt 9A

Chapter 5—

insert—

‘Part 9A Progressive rehabilitation

‘Division 1 Certification of progressive rehabilitation for level 1 mining projects

‘Subdivision 1 Progressive certification and its effects

‘266A What is *progressive certification*

- ‘(1) The administering authority may, under this division, certify that a particular area within a relevant mining tenement for a level 1 mining project has been rehabilitated under all relevant requirements of—
- (a) this Act; and
 - (b) the environmental authority (mining activities) under which the mining project is authorised; and
 - (c) any relevant guideline or other document made under this Act.
- ‘(2) The certification is a *progressive certification* for the mining tenement.
- ‘(3) The area the subject of the progressive certification is a *certified rehabilitated area* for the mining tenement.

‘266B Effect of progressive certification

- ‘(1) If progressive certification has been given for a mining tenement, the requirements mentioned in section 266A(1) are taken to have been complied with for the certified rehabilitated area for the mining tenement.
- ‘(2) Subsection (1) applies despite another provision of this Act or any change in the requirements.
- ‘(3) However, this section is subject to section 266C.

‘266C Continuing responsibility of environmental authority holder relating to certified rehabilitated area

- ‘(1) This section applies if progressive certification has been given for a mining tenement.
- ‘(2) The holder of the environmental authority to which the mining tenement relates must maintain the certified rehabilitated area for the mining tenement under the conditions of the authority in force when the certification was given (the *existing conditions*).
- ‘(3) Any change to the conditions of the environmental authority is of no effect to the extent it purports to impose a more stringent obligation for the certified rehabilitated area than any obligation applying under the existing conditions.

Example of a change to impose a more stringent requirement—

A change to an existing condition to require rehabilitation to alter a gradient to a lower slope is more stringent because of the necessarily increased costs of recontouring the gradient.

- ‘(4) The obligation under subsection (2) ends on the last of the following to happen—
 - (a) the surrender under the Mineral Resources Act of the mining tenement, or part of the mining tenement;
 - (b) the environmental authority ends or ceases to have effect;
 - (c) if the existing conditions include a condition requiring compliance with an obligation after the authority ends or ceases to have effect—compliance with the condition.

‘Subdivision 2 Applying for progressive certification

‘266D Who may apply for progressive certification

‘The holder of an environmental authority (mining activities) under which a level 1 mining project is authorised may apply for progressive certification for a relevant mining tenement for the environmental authority.

‘266E Requirements for application

- ‘(1) The application must be—
 - (a) in the approved form; and
 - (b) supported by enough information to enable the administering authority to decide the application; and
 - (c) accompanied by—
 - (i) a progressive rehabilitation report for the environmental authority (mining activities); and
 - (ii) an audit statement for the report; and
 - (iii) the fee prescribed under a regulation.
- ‘(2) The progressive rehabilitation report must comply with section 266G.
- ‘(3) The audit statement must—
 - (a) be made for the environmental authority holder; and
 - (b) state—
 - (i) the extent to which activities carried out under the environmental authority relating to the proposed certified rehabilitated area for the relevant mining tenement have complied with the conditions of the environmental authority; and
 - (ii) the extent to which the progressive rehabilitation report is accurate.

‘266F Amending application

- ‘(1) The applicant may, at any time before the administering authority decides the application, amend the application.
- ‘(2) However, the amendment may be made only by giving the administering authority a written notice stating the amendment.
- ‘(3) The notice must be accompanied by the fee prescribed under a regulation.

- ‘(4) If the progressive rehabilitation report or audit statement require changes to accommodate the amended application, the changes or amended documents must accompany the notice.

‘Subdivision 3 Progressive rehabilitation report

‘266G Requirements for progressive rehabilitation report

- ‘(1) The progressive rehabilitation report must—
- (a) contain the information required under section 274 for a final rehabilitation report, as if a reference in that section to the land were a reference to the proposed certified rehabilitated area; and
 - (b) include—
 - (i) a map of an appropriate scale that shows the proposed certified rehabilitated area; and
 - (ii) relevant information to locate the proposed certified rehabilitated area, including, for example, GPS information or a survey; and
 - (iii) an environmental risk assessment for the proposed certified rehabilitated area; and
 - (c) if progressive certification has previously been given for a relevant mining tenement for the environmental authority—
 - (i) state when the certification was given; and
 - (ii) identify the certified rehabilitated area the subject of the certification.
- ‘(2) The environmental risk assessment must—
- (a) comply with a methodology published by the administering authority; and
 - (b) identify all credible risks for the proposed certified rehabilitated area; and

- (c) evaluate the likelihood and consequences of events that reach a threshold of significance published by the administering authority.

‘266H Amending report

- ‘(1) The applicant may, at any time before the administering authority decides the application, amend the progressive rehabilitation report that accompanied the application (the *original report*).
- ‘(2) However, the amendment may be made only by giving the administering authority a written notice stating the amendment.
- ‘(3) The notice must be accompanied by the fee prescribed under a regulation.
- ‘(4) For this part, the original report is taken to be the progressive rehabilitation report as amended from time to time by any notice given under this section.

‘266I Assessment report may be given

- ‘(1) The administering authority may give the applicant an assessment report about the progressive rehabilitation report.
- ‘(2) However, the report must be given—
 - (a) within 30 business days after the application is made; or
 - (b) if the applicant has amended the application or progressive rehabilitation report within the 30 business days—within 30 business days after notice of the amendment is given under section 266H

‘Subdivision 4 Processing application

‘266J Deciding application

‘The administering authority must decide give or refuse the progressive certification—

- (a) within 40 business days after the application is made; or
- (b) if the applicant has amended the application or progressive rehabilitation report—within 40 business days after notice of the amendment is given under section 266H.

‘266K Criteria for decision

- ‘(1) In deciding the 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 progressive rehabilitation report;
 - (iii) the audit statement for the report;
 - (iv) any relevant assessment report given under section 266I;
 - (v) another matter prescribed under an environmental protection policy or a regulation.
- ‘(2) The administering authority must not give the progressive certification unless it is satisfied with the environmental risk assessment included in the progressive rehabilitation report, and—
 - (a) it is satisfied the conditions of the environmental authority (mining activities) have been complied with in relation to the proposed certified rehabilitated area; or
 - (b) it is satisfied the land on which each relevant mining activity has been carried out in relation to the proposed certified rehabilitated area has been satisfactorily rehabilitated; or
 - (c) if a regulation has prescribed another circumstance for this section—the administering authority is satisfied with the circumstance.

‘266L Steps after making decision

- ‘(1) If the administering authority decides the application, it must, within 10 business days after the decision is made—
- (a) if the decision was to give the progressive certification—
 - (i) record particulars of the certification in the appropriate register; and
 - (ii) give the applicant written notice of the decision; or
 - (b) if the decision was to refuse the progressive certification—give the applicant an information notice about the decision.
- ‘(2) However, if, under section 266N, a residual risk payment has been required for the proposed certified rehabilitated area, the administering authority need not act under subsection (1)(a) until the requirement has been complied with.

‘Division 2 Payment for residual risks of rehabilitation

‘266M Application of div 2

‘This division applies if progressive certification has been applied for for a relevant mining tenement for an environmental authority (mining activities).

‘266N Payment may be required for residual risks

- ‘(1) Subject to sections 266O and 266P, the administering authority may require the applicant to pay it a stated amount for the residual risks of the proposed certified rehabilitated area for the mining tenement.
- ‘(2) The requirement must be included in, or be accompanied by, an information notice about the decision to make the requirement.

- ‘(3) The amount may be included in the financial assurance for the environmental authority until surrender, under the Mineral Resources Act, of the relevant mining tenement.

‘266O Criteria for decision to make requirement

‘The administering authority may require the payment only if it is satisfied it is justified having regard to—

- (a) the degree of risk of environment harm that is likely to happen if the proposed certified rehabilitated area is managed under the relevant requirements of this Act and instruments made under it; and
- (b) the likelihood of action being needed to—
 - (i) reinstate rehabilitation that fails to establish a safe, stable and self-sustaining ecosystem; or
 - (ii) restore the environment because of environmental harm resulting from mining activities, despite the rehabilitation; or

Example of environmental harm—

surface accumulation of contaminants

- (iii) maintain environmental management processes needed to protect the environment; or

Examples of things that may be used for an environmental management process—

fences, pumps and water polishing wetlands

- (c) the cost of likely action in comparison with the cost of best practice environmental management of the similar use of land that has not previously been affected by mining activities.

‘266P Amount and form of payment

- ‘(1) The administering authority must decide the amount and form of the payment.
- ‘(2) The administering authority may decide the amount by reference to a guideline or other publicly available document.

‘(3) Despite subsections (1) and (2), the administering authority must not require a payment of an amount more than the amount that, in the authority’s opinion, represents the likely rehabilitation costs.

‘(4) In this section—

likely rehabilitation costs means all likely costs and expenses that may be incurred in taking action to rehabilitate or restore and protect the environment because of environmental harm that may be caused by the residual risks of the proposed certified rehabilitated area.’

71 Amendment of s 268 (Surrender only by approval)

Section 268(1), ‘An environmental authority’—

omit, insert—

‘Subject to section 269A, an environmental authority’.

72 Replacement of s 269 (Surrender may be partial)

Section 269—

omit, insert—

‘269 Partial surrenders

‘(1) A surrender application may be made for, and the administering authority may approve a surrender of, part of an environmental authority (mining activities).

‘(2) Without limiting subsection (1), if—

(a) under the Mineral Resources Act, the holder of an environmental authority (mining activities) seeks to surrender (the *tenement surrender*) all or part of a relevant mining tenement for the environmental authority; and

(b) were the tenement surrender to be made under that Act, some mining tenements, or parts of mining tenements, would remain as relevant mining tenements for the environmental authority;

a surrender application may be made for, and the administering authority may approve a surrender of, the parts of the environmental authority that relate to the tenement surrender.

‘(3) However, a surrender application mentioned in subsection (2) can not be made if the tenement surrender is a conditional surrender.

‘(4) Without limiting sections 277 and 278, the administering authority may refuse a surrender application under this section if—

(a) the administering authority considers that it is appropriate to amend the environmental authority to reflect the partial surrender; and

(b) the applicant has not made an amendment application for the part of the environmental authority not sought to be surrendered.

‘269A Conditional surrender of environmental authority (mining activities)

‘(1) This section applies if, under the Mineral Resources Act, the holder of an environmental authority (mining activities) (the *old authority*) seeks a conditional surrender (the *tenement surrender*) of all or part of a relevant mining tenement for the environmental authority.

‘(2) The holder may apply for—

(a) approval to surrender the part of the old authority that relates to the tenement surrender; and

(b) the issuing of a another environmental authority (mining activities) (the *new authority*) that relates to land the subject of the tenement surrender; and

(c) any amendment of the old authority needed to reflect the partial surrender and the issuing of the new authority.

‘(3) The application must—

(a) state the extent of mining activities carried out on the land the subject of the tenement surrender; and

- (b) propose—
 - (i) the amount of financial assurance for the new authority, verified by an audit statement; and
 - (ii) any amendment of the old authority sought under subsection (2)(c); and
 - (iii) the conditions of the new authority.
- ‘(4) If the administering authority grants the application it may take the steps mentioned in subsection (2) without the applicant having made a surrender application for the old authority or an environmental authority application for the new authority.
- ‘(5) For applying section 303(3)(a)¹¹ in relation to the new authority, the new mining tenement is a relevant mining tenement.
- ‘(6) The audit statement must—
 - (a) be made by or for the applicant; and
 - (b) state whether or not the proposed amount of financial assurance for the environmental authority has been worked out in the way decided by the administering authority, under section 364(3).’.

73 Amendment of s 274 (Content requirements for report)

- (1) Section 274(e)—
renumber as section 274(h).
- (2) Section 274—
insert—
 - ‘(e) state details of—
 - (i) the monitoring program and the results of monitoring rehabilitation indicators required under any condition of the environmental authority; and

¹¹ Section 303 (Restrictions on environmental authority or transfer taking effect)

- (ii) any consultation with members of the public, community groups, government agencies, and other bodies in relation to the completion criteria for rehabilitation, as stated in the environmental authority; and
- (f) state an environmental risk assessment of the land; and
- (g) propose the residual risks associated with the rehabilitation of the land, worked out under a guideline or other document publicly available from the administering authority.

Examples of proposed residual risks—

- the present value of the future costs of likely repairs
- necessary monitoring and maintenance costs
- ongoing management costs’.

(3) Section 274—

insert—

‘(2) The environmental risk assessment must—

- (a) use a methodology agreed to by the administering authority; and
- (b) show any part of the land that is likely to change or fail to the extent that monitoring, maintenance, reconstruction or other remedial action may be necessary.’.

74 Amendment of s 278 (Criteria for decision)

(1) Section 278, heading, ‘decision’—

omit, insert—

‘decisions’.

(2) Section 278(1)(b)(ii) to (v)—

renumber as section 278(1)(b)(iii) to (vi).

(3) Section 278(1)(b)—

insert—

‘(ii) any monitoring results relating to the rehabilitated area the subject of the application;’.

(4) Section 278(1)—

insert—

‘(c) if a progressive certification has been given for a relevant mining tenement for the environmental authority—

- (i) confirm that the certified rehabilitated area for the mining tenement still meets the criteria under section 266K against which it was certified; and
- (ii) if the confirmation is made—give full effect to the certification.’.

75 Insertion of new ss 278A and 278B

After section 278—

insert—

‘278A Directions to carry out rehabilitation may be given if surrender refused

‘If the administering authority decides to refuse a surrender application, it may, with the notice of the refusal required under section 279, give the applicant a written direction to carry out further stated rehabilitation within a stated reasonable period.

‘278B Payment may be required for residual risks of rehabilitation

- ‘(1) This section applies only for a surrender application for an environmental authority (mining activities).
- ‘(2) To remove any doubt, it is declared that this section does not apply for an application under section 269A.¹²

12 Section 269A (Conditional surrender of environmental authority (mining activities))

- ‘(3) The administering authority may require the applicant to pay it a stated amount for the residual risks of the area the subject of the application.
- ‘(4) If a progressive certification has previously been given for a relevant mining tenement for the environmental authority, the administering authority must, in deciding to require the payment—
 - (a) confirm that the area still meets the criteria under section 266K against which it was certified; and
 - (b) take into account any previous payment for the progressive certification.¹³’.

76 Amendment of s 279 (Steps after making decision)

- (1) Section 279(a)(ii)—
omit, insert—
 - ‘(ii) give the applicant—
 - (A) written notice of the decision; and
 - (B) an information notice about any decision under section 278B for the application; or’.
- (2) Section 279(b), after ‘decision’, second mention—
insert—

‘and any rehabilitation direction decided to be given with the notice of the refusal’.

77 Insertion of new s 279A

Chapter 5, part 10—
insert—

¹³ See part 9A, division 2 (Payment for residual risks of rehabilitation).

‘279A Restriction on surrender taking effect if payment required for residual risks

- ‘(1) This section applies if the applicant has, under section 278B, been required to pay an amount for residual risks of the area the subject of a surrender application.
- ‘(2) Despite section 279(1), until the requirement has been complied with—
- (a) a decision to approve the surrender does not take effect; and
 - (b) particulars of the surrender must not be recorded under section 279(1)(a)(i).’.

78 Amendment of s 289 (False or misleading information about environmental audits)

Section 289(1) and (2), penalties—

omit, insert—

‘Maximum penalty—1665 penalty units or 2 years imprisonment.’.

79 Amendment of s 298 (Notice of proposed action decision)

Section 298(1), ‘a standard environmental authority (mining activities)’—

omit, insert—

‘an environmental authority for a level 2 mining project’.

80 Amendment of s 358 (When order may be issued)

Section 358(d)—

insert—

‘(viii)a rehabilitation direction.’.

81 Amendment of s 364 (When financial assurance may be required)

Section 364(5), ‘or site management plan’—

omit, insert—

‘, site management plan or relevant development approval’.

82 Amendment of s 366 (Application for amendment or discharge of financial assurance)

Section 366—

insert—

‘(7) Subsection (8) applies if—

(a) the application—

(i) is to amend or discharge financial assurance for an environmental authority; and

(ii) it was made because of a transfer application for the environmental authority; and

(b) the administering authority decides to make the amendment or discharge applied for.

‘(8) Despite the decision, the administering authority may withhold making the amendment or discharge until—

(a) the transfer application has been approved; and

(b) any financial assurance for the authority required to be given by the transferee has been given; and

(c) the transfer has taken effect.’.

83 Amendment of s 436 (Unlawful environmental harm)

Section 436(3)(a), ‘or a code of environmental compliance’—

omit.

84 Amendment of s 480 (False, misleading or incomplete documents)

Section 480(1), penalty—

omit, insert—

‘Maximum penalty—1665 penalty units or 2 years imprisonment.’.

85 Amendment of s 481 (False or misleading information)

Section 481(1), penalty—

omit, insert—

‘Maximum penalty—1665 penalty units or 2 years imprisonment.’.

86 Amendment of s 492 (Responsibility for acts or omissions of representatives)

Section 492—

insert—

‘(4) In this section—

representative, of a person, means—

(a) if the person is a corporation—

(i) an executive officer, employee or agent of the corporation; and

(ii) if, under the Corporations Act, the corporation (the ***parent corporation***) controls another corporation or another corporation is a subsidiary of the parent corporation—

(A) the controlled corporation or the subsidiary corporation; and

(B) an executive officer, employee or agent of the controlled corporation or the subsidiary corporation; or

(b) if the person is an individual—an employee or agent of the individual.’.

87 Amendment of s 540 (Required registers)

Section 540(1)(e)(vii), after ‘submitted’—

insert—

‘progressive and’.

88 Amendment of s 549 (Minister may approve standard environmental conditions)

Section 549(1), after ‘an environmentally relevant activity’—

insert—

‘, or aspects of an environmentally relevant activity,’.

89 Amendment of s 549A (When standard environmental conditions must be complied with)

Section 549A(3), ‘section 435A does’—

omit, insert—

‘sections 435A and 435B¹⁴ do’.

90 Amendment of s 619 (Continuing effect of particular environmental authorities)

(1) Section 619(1), after ‘chapter 4 activity’—

insert—

‘(other than an approval mentioned in section 624(1)(b))’.

(2) Section 619(2)(e), after ‘—the authority’—

insert—

‘(including as it has effect as a registration certificate and as a development approval)’.

(3) Section 619(3), after ‘environmental authority for a chapter 4 activity’—

14 Section 435A (Offence to contravene standard environmental conditions) and 435B (Registered operator responsible for ensuring conditions complied with)

insert—

‘(other than an approval mentioned in section 624(1)(b))’.

91 Amendment of s 624 (Effect of commencement on particular approvals)

(1) Section 624(1)—

omit, insert—

‘(1) This section applies for a person who immediately before the commencement of this section was the operator of, and was carrying out, a level 2 chapter 4 activity under—

(a) a development approval in force immediately before the commencement; or

(b) an approval that—

(i) is mentioned in—

(A) the repealed *Environmental Protection (Interim) Regulation 1995*, (the **repealed regulation**) as in force on 1 March 1995, section 63 or 65; or

(B) the repealed regulation, as in force on 28 June 1996, section 65; and

(ii) was in force immediately before the commencement.¹⁵

‘(1A) However, this section does not apply if the activity is authorised under an environmental authority to which section 619 applies.’.

(2) Section 624(2)(b)—

omit, insert—

15 repealed *Environmental Protection (Interim) Regulation 1995* as in force on 1 March 1995, section 63 (Transitional provision about works for level 2 activities) or 65 or as in force on 28 June 1996, section 65 (Transitional provisions about sch 1, item 3)

‘(b) for an approval mentioned in subsection (1)(b)—the approval ceases to have effect on the first of the following to happen—

- (i) the person carrying out the activity changes;
- (ii) there is a material change of use of premises for the activity, as defined under the Integrated Planning Act, section 1.3.5, definition *material change of use*, paragraph (a) or (b);
- (iii) a development approval for the activity takes effect.’.

(3) Section 624—

insert—

‘(5) To remove any doubt, it is declared that the registration certificate does not limit or otherwise affect subsection (2)(a) or (b).’.

92 Omission of s 629 (Continuing operation of s 594 (Limited application of s 427 for transitional authority))

Section 629—

omit.

93 Amendment of s 631 (Financial assurance if security for related petroleum authority is monetary)

Section 631(2), ‘the section’—

omit, insert—

‘either section mentioned in subsection (1)(b)’.

94 Amendment of s 632 (Financial assurance if security for related petroleum authority is non-monetary)

Section 632(3), ‘the section’—

omit, insert—

‘either section mentioned in subsection (1)(b)’.

95 Amendment of s 634 (Amendment of financial assurance condition under this part)

- (1) Section 634(3)—
omit.
- (2) Section 634(4)—
renumber as section 634(3).

96 Insertion of new ch 13, pt 8

After section 641—

insert—

‘Part 8 Transitional provision for Environmental Protection and Other Legislation Amendment Act 2005

‘642 EISs currently undergoing EIS process

‘Sections 56A and 56B do not apply for an EIS if the draft terms of reference for the EIS were, under section 41, submitted before the commencement of sections 56A and 56B.

‘643 Transitional provision for amended ss 619 and 624

- ‘(1) Subsection (2) applies if, immediately before the commencement of this section, section 619 applied in relation to an approval mentioned in section 624(1)(b), as in force on the commencement of this section,
- ‘(2) To remove any doubt, it is declared that section 619, as amended by the *Environmental Protection and Other Legislation Amendment Act 2005*, ceases to apply in relation to the approval on the commencement of this section.’

97 Amendment of sch 1 (Original decisions)

- (1) Schedule 1, part 1, division 3—

insert—

- | | |
|-------|---|
| ‘266J | Refusal of progressive certification |
| 266N | Requirement to make residual risk payment |
| 278A | Decision to give rehabilitation direction |
| 278B | Requirement to make residual risk payment.’ |

- (2) Schedule 1, part 2, division 3, entry for section 297(1), ‘a standard environmental authority (mining activities).’—

omit, insert—

‘an environmental authority for a level 2 mining project’.

98 Amendment of sch 3 (Dictionary)

- (1) Schedule 3, definitions *EIS process*, *representative* and *transfer application*—

omit.

- (2) Schedule 3—

insert—

‘***certified rehabilitated area***, for a mining tenement, see section 266A(3).

conditional surrender, of a mining tenement, means a surrender in relation to the tenement of a type mentioned in the Mineral Resources Act, section 107(7), 161(4), 210(13) or 309(12).

EIS process, for an EIS, means—

- (a) the process under chapter 3, part 1; and
- (b) the seeking and giving, under chapter 3, part 1, division 7, subdivision 1, of advice, comment or information in relation to the EIS.

level 2 chapter 4 activity means a chapter 4 activity that is a level 2 environmentally relevant activity.

progressive certification, for a mining tenement, see section 266A(2).

project authority see section 155(4)(a).

rehabilitation direction means a direction given under section 278A.

residual risks, of a proposed certified rehabilitated area for a mining tenement, means all or any of the following—

- (a) the risk that, although the rehabilitation appeared to be satisfactory when the area was assessed for an application for progressive certification or for surrender—
 - (i) it will, in the foreseeable future, fail to perform as predicted in a relevant progressive rehabilitation report or final rehabilitation report; and
 - (ii) the failure will result in the need for repair, replacement or maintenance work for the area;
- (b) the risk that the area will need ongoing management;

Examples of ongoing management—

- maintenance of fences to ensure the safety of steep slopes or to prevent access to contaminated areas
 - providing a pump-back system to manage the discharge of contaminants
- (c) the risk of contaminants being released from the area by animals, water or wind and potentially causing environmental harm that may require a program to monitor what management action should be taken in relation to the release.

transfer application for—

- (a) chapter 4A—see section 129(2)(a); or
 - (b) chapter 5—see section 259(2)(a).’.
- (3) Schedule 3, definition *amendment application*, paragraph (b), ‘section 238’—

omit, insert—

‘section 238(1)’.

- (4) Schedule 3, definition *EIS assessment report*, ‘section 57’—
omit, insert—
‘section 57(2)’.
- (5) Schedule 3, definition *mobile and temporary environmentally relevant activity*, subparagraph (c)(i), from ‘but, other than’ to ‘calendar year’—
omit.
- (6) Schedule 3, definition, *non-code compliant authority*, paragraph (b), ‘section 154(5)’—
omit, insert—
‘section 148(5)’.
- (7) Schedule 3, definition *public notice requirement*, ‘section 122(1)’—
omit, insert—
‘section 122(2)’.
- (8) Schedule 3, definition *submitted EM plan*, ‘environment management plan’—
omit, insert—
‘environmental management plan’.
- (9) Schedule 3, definition *submitted EM plan*, after ‘section 204,’—
insert—
‘226A.’.

Part 5**Amendment of Forestry Act 1959**

99 Act amended in pt 5 and schedule

- (1) This part amends the *Forestry Act 1959*.
- (2) The schedule also includes amendments of that Act.

100 Amendment of s 35 (Granting of permit for land within State forest)

- (1) Section 35(1)(c)—
omit, insert—
‘(c) permits to graze stock (*stock grazing permits*) for a term fixed by the chief executive that—
 - (i) generally—is no more than 7 years; or
 - (ii) if the permit is for land in an SEQFA forest reserve—ends no later than 31 December 2024; or’.
- (2) Section 35(1A), from ‘However’ to ‘stock grazing permit’—
omit, insert—
‘If the term of an occupation permit or stock grazing permit, other than a stock grazing permit for land in an SEQFA forest reserve,’.
- (3) Section 35, after subsection (1A)—
insert—
‘(1AB) The chief executive may extend the term of a stock grazing permit granted over land in an SEQFA forest reserve for a term that ends no later than 31 December 2024.’.
- (4) Section 35(1B), ‘In addition’—
omit, insert—
‘Despite subsections (1) to (3)’.
- (5) Section 35(1A) to (3)—

Protection Act 1994, section 619(2)(e) or 624(2)(b);¹⁶ or

- (ii) there is no development approval for the activity and it was, at any time before 4 October 2004, carried out without an environmental authority as required under the *Environmental Protection Act 1994*.¹⁷.

104 Amendment of s 1.4.1 (Lawful uses of premises on 30 March 1998)

Section 1.4.1—

insert—

- ‘(2) To remove any doubt, it is declared that subsection (1) does not, and has never, affected or otherwise limited a requirement under another Act to obtain an approval for the existing use.
- ‘(3) In this section—
- approval* includes an environmental authority under the *Environmental Protection Act 1994*, as in force from time to time from 30 March 1998.’.

105 Amendment of s 3.8.1 (Mobile and temporary environmentally relevant activities)

- (1) Section 3.8.1(1), after ‘*Environmental Protection Act 1994*,’—

insert—

‘carrying out’.

- (2) Section 3.8.1(2)—

insert—

- ‘(e) written consent of the person (the *applicant*) who applied for the development approval is required for any

16 *Environmental Protection Act 1994*, section 619 (Continuing effect of particular environmental authorities) or 624 (Effect of commencement on particular approvals)

17 See also section 6.6.1 (Deferment of application of s 4.3.1 to particular material changes of use).

one who carries out the activity the subject of the approval who is not an agent or employee of the applicant.’.

106 Amendment of s 4.3.1 (Carrying out assessable development without permit)

- (1) Section 4.3.1(1), ‘start assessable development’—
omit, insert—
‘carry out assessable development’.
- (2) Section 4.3.1(2), ‘section 4.3.6’—
omit, insert—
‘sections 4.3.6 and 4.3.6A’.

107 Amendment of s 4.3.3 (Compliance with development approval)

Section 4.3.3(2), ‘section 4.3.6’—
omit, insert—
‘sections 4.3.6 and 4.3.6A’.

108 Amendment of s 4.3.4 (Compliance with identified codes about use of premises)

Section 4.3.4(2), ‘section 4.3.6’—
omit, insert—
‘sections 4.3.6 and 4.3.6A’.

109 Amendment of s 4.3.5 (Offences about the use of premises)

Section 4.3.5, ‘section 4.3.6’—
omit, insert—
‘sections 4.3.6 and 4.3.6A’.

110 Amendment of s 4.3.6 (Development or use carried out in emergency)

- (1) Section 4.3.6, heading—

omit, insert—

‘4.3.6 General exemption for emergency development or use’.

- (2) Section 4.3.6(1)(a), ‘starts development or a use’—

omit, insert—

‘carries out development or a use, other than operational work that is tidal works,’.

111 Insertion of new s 4.3.6A

After section 4.3.6—

insert—

‘4.3.6A Coastal emergency exemption for operational work that is tidal works

- ‘(1) This section applies to operational work (the *emergency work*) if all of the following circumstances apply—

- (a) the emergency work is tidal works;
- (b) other than for this section, a development permit would have been required to carry out the emergency work;
- (c) the emergency work is necessary to ensure the following are not, or are not likely to be, endangered by a coastal emergency—
 - (i) the structural safety of an existing structure for which there is a development permit for operational work that is tidal works; or
 - (ii) the life or health of a person; or
 - (iii) the structural safety of a building.

- ‘(2) Sections 4.3.1, 4.3.3, 4.3.4 and 4.3.5 do not apply to a person who carries out the emergency work if—

- (a) the person has made a safety management plan for the emergency work, after having regard to the following matters—

- (i) the long-term safety of members of the public who have access to the emergency work or any structure to which the emergency work relates;
 - (ii) if practicable, the advice of any registered professional engineer who has conducted an audit of any structure to which the emergency work relates; and
 - (b) the person complies with the safety management plan; and
 - (c) the person takes reasonable precautions and exercises proper diligence to ensure the emergency work, and any structure to which the emergency work relates, are in a safe condition; and
 - (d) without limiting paragraph (c), the person commissions a registered professional engineer to conduct an audit of any structure to which the emergency work relates, to ensure the emergency work and the structure are in a safe condition; and
 - (e) as soon as reasonably practicable after starting the emergency work, the person—
 - (i) makes a development application for any development permit that would otherwise be required for the work; and
 - (ii) gives the assessment manager for the application written notice of the work and a copy of the safety management plan.
- ‘(3) However, subsection (2) does not apply if the person is required by an enforcement notice or order to stop carrying out the emergency work.
- ‘(4) Also, subsection (2) ceases to apply, if the development application is refused.
- ‘(5) If, under subsection (4), subsection (2) ceases to apply, the person must remove the emergency work as soon as practicable.
- Maximum penalty—1665 penalty units.
- ‘(6) In this section—

registered professional engineer means a registered professional engineer under the *Professional Engineers Act 2002* or a person registered as a professional engineer under an Act of another State.’.

112 Insertion of new ch 6, pt 6

After section 6.5.1—

insert—

**‘Part 6 Transitional provision for
Environmental Protection and
Other Legislation Amendment
Act 2005**

**‘6.6.1 Deferment of application of s 4.3.1 to particular
material changes of use**

‘Section 4.3.1 does not apply to the carrying out of a material change of use of premises mentioned in section 1.3.5, definition *material change of use*, paragraph (c), until 12 months after the commencement of that paragraph.’.

**113 Amendment of sch 8 (Assessable development and
self-assessable development)**

- (1) Schedule 8, part 1, table 2, item 1, including heading—
omit, insert—

omit, insert—

‘The Governor in Council may approve’.

116 Amendment of s 23 (Preparation of final plan)

Section 23—

insert—

- ‘(2) The final zoning plan—
- (a) is subordinate legislation; and
 - (b) does not have effect until the later of the following—
 - (i) the day it is approved by the Governor in Council under section 21;
 - (ii) the commencement day stated in the plan.’.

117 Amendment of s 25 (Amendment of zoning plan)

Section 25(1), ‘A regulation may amend’—

omit, insert—

‘The Governor in Council may approve an amendment of’.

118 Amendment of s 27 (Preparation of final amendment)

Section 27—

insert—

- ‘(2) The final amendment—
- (a) is subordinate legislation; and
 - (b) does not have effect until the later of the following—
 - (i) the day it is approved by the Governor in Council under section 25;
 - (ii) the commencement day stated in the amendment.’.

119 Amendment of s 28 (Tabling of statement with zoning plan or amendment)

Section 28(2), ‘regulation prescribing or amending the zoning plan’—

omit, insert—

‘zoning plan or amendment’.

120 Amendment of s 43 (Entry or use for a prohibited purpose)

(1) Section 43(2)—

omit.

(2) Section 43(3) and (4)—

renumber as section 43(2) and (3).

121 Amendment of s 131 (Proceedings for indictable offence)

Section 131(4), ‘165 penalty units’—

omit, insert—

‘1665 penalty units’.

122 Amendment of s 155 (Existing zoning plans)

Section 155(2), ‘prescribed’—

omit, insert—

‘approved’.

123 Insertion of new s 155A

After section 155—

insert—

‘155A Continuation of making and approval of zoning plan or amendment

‘(1) This section applies if, before the commencement of this section—

- (a) a zoning plan, or an amendment of a zoning plan, was in preparation for making and approval under the 1982 Act but was not made; or
 - (b) a zoning plan, or an amendment of a zoning plan, was made under the 1982 Act, but was not approved by the Governor in Council under that Act.
- ‘(2) If this section applies because of subsection (1)(a), the chief executive may make the plan or amendment, and the Governor in Council may approve it, as if this Act had not been enacted.
- ‘(3) If this section applies because of subsection (1)(b), the Governor in Council may approve the plan or the amendment as if this Act had not been enacted.
- ‘(4) A zoning plan approved under subsection (2) or (3)—
- (a) is taken to be a zoning plan approved under section 21; and
 - (b) is to be read with the changes necessary to make it consistent with, and adapt its operation to, this Act; and
 - (c) may be amended or repealed under this Act.
- ‘(5) However, the zoning plan, as made and approved, may provide for matters in a way that is consistent with this Act, rather than the repealed Act.
- ‘(6) Also, the zoning plan—
- (a) may be for a marine park declared under section 8; and
 - (b) may provide for all the matters mentioned in section 24(2).
- ‘(7) An amendment of a zoning plan approved under subsection (2) or (3)—
- (a) is taken to be an amendment of a zoning plan approved under section 25; and
 - (b) is to be read with the changes necessary to make it consistent with, and adapt its operation to, this Act.

- ‘(8) However, the amendment, as made and approved, may provide for matters in a way that is consistent with this Act, rather than the repealed Act.
- ‘(9) In this section—
1982 Act means the *Marine Parks Act 1982* as in force from time to time before its repeal under this Act.’.

124 Insertion of new s 156A

After section 156—

insert—

‘156A Continuation of preparation and approval of management plan

- ‘(1) This section applies if, before the commencement of this section—
- (a) the preparation of a management plan under the 1990 regulation was started and was not finished; or
 - (b) a management plan was prepared under the 1990 regulation, but the Minister had not approved the plan under that regulation.
- ‘(2) If this section applies because of subsection (1)(a), the chief executive may continue and finish the preparation of the plan, and the Minister may approve it, as if this Act had not been enacted.
- ‘(3) If this section applies because of subsection (1)(b), the Minister may approve the plan as if this Act had not been enacted.
- ‘(4) A plan approved under subsection (2) or (3)—
- (a) is taken to be a management plan approved under section 29; and
 - (b) is to be read with the changes necessary to make it consistent with, and adapt its operation to, this Act; and
 - (c) may be amended or repealed under this Act.

‘(5) However, the management plan, as prepared and approved, may provide for matters in a way that is consistent with this Act, rather than the repealed Act.

‘(6) In this section—

1990 regulation means the *Marine Parks Regulation 1990* as in force from time to time before the repeal of the *Marine Parks Act 1982*.’.

125 Amendment of schedule (Dictionary)

(1) Schedule, definitions *management plan* and *zoning plan*—
omit.

(2) Schedule—
insert—

‘management plan, for a marine park, means a management plan in force for the park under this Act.

zoning plan, for a marine park, means a zoning plan in force for the park under this Act.’.

Part 8 Amendment of Mineral Resources Act 1989

126 Act amended in pt 8

This part amends the *Mineral Resources Act 1989*.

127 Amendment of s 64A (Issue of certificate of public notice)

Section 64A(1)(b)(i), from ‘code compliant application’—
omit, insert—

‘code compliant application and, under that Act, the mining registrar has been given a copy of the relevant code of

environmental compliance containing the standard
environmental conditions; or’.

128 Amendment of s 252A (Issue of certificate of public notice)

Section 252A(1)(b)(i), from ‘code compliant application’—
omit, insert—

‘code compliant application and, under that Act, the mining registrar has been given a copy of the relevant code of environmental compliance containing the standard environmental conditions; or’.

129 Amendment of s 391A (Restriction on decisions or recommendations about mining tenements)

(1) Section 391A(6)—

renumber as section 391(7).

(2) Section 391A—

insert—

‘(6) To remove any doubt, it is declared that for this section, a reference to the issuing of an environmental authority includes a reference to an environmental authority that, under the Environmental Protection Act, section 164 or 168 is taken to have been issued.¹⁸’.

¹⁸ Environmental Protection Act, section 164 (Automatic issuing of code compliant authority if no relevant mining claim or mining lease) or 168 (Automatic issuing of code compliant authority in particular circumstances)

- (4) Section 45(5), as renumbered, ‘subsection (5)’—
omit, insert—
‘subsection (4)’.

133 Amendment of s 62 (Restriction on taking etc. of cultural and natural resources of protected areas)

Section 62(7), definition *authorised person*—
omit.

134 Replacement of s 70R (Expiry)

Section 70R—
omit, insert—

‘70R Expiry

‘This part expires on 31 December 2025.’.

135 Amendment of s 88 (Restrictions on taking protected animal and keeping or use of unlawfully taken protected animal)

Section 88(6), definition *authorised person*—
omit.

136 Amendment of s 88A (Restriction on keeping or use of lawfully taken protected animal)

Section 88A(3)—
omit.

137 Amendment of s 88B (Offence to keep or use native wildlife reasonably suspected to have been unlawfully taken)

- (1) Section 88B(1), after penalty—
insert—

‘Examples of when an offence is committed under subsection (1)—

A buys and keeps the native wildlife mentioned in item 1 or 2, under the circumstances mentioned in the item. A is not an authorised person. A did not buy the wildlife from the State. A reasonable person in A’s circumstances ought to have suspected that the wildlife may have been unlawfully taken.

- 1 A buys protected wildlife from B at a market stall. Before buying the wildlife A asked B for evidence that it had been lawfully taken. In response, B replied that B did not have that evidence and that B bought the wildlife from someone else whom B did not know.
- 2 A holds a licence under this Act to keep particular protected wildlife. A buys protected wildlife of that type from B. Under this Act, to keep or deal with the wildlife, B must hold a particular type of licence. A regulation requires that B must, before the sale is completed, fill in a movement advice in the approved form for the movement of the wildlife because of the sale. The approved form requires a written acknowledgement by A as the person to whom the wildlife is being moved. B has not shown to A that B holds a licence to keep and deal with the wildlife. A did not give the acknowledgement.’.

(2) Section 88B(3), definition *authorised person*—
omit.

138 Amendment of s 89 (Restriction on taking etc. protected plants)

Section 89(5), definition *authorised person*—
omit.

139 Amendment of s 90 (Restriction on using particular protected plants)

Section 90(2)—
omit.

140 Amendment of s 91 (Restriction on release etc. of international and prohibited wildlife)

Section 91(3)—
omit.

141 Amendment of s 97 (Restriction taking etc. of native wildlife in areas of major interest and critical habitats)

Section 97(5)—

omit.

142 Amendment of s 111 (Management plans)

(1) Section 111(1)(b)(i)—

omit, insert—

‘(i) a nature refuge, under section 49;¹⁹ or’.

(2) Section 111—

insert—

‘(7) The Minister may after the declaration of a nature refuge, other than under section 49, prepare a management plan for the area of the refuge if the land-holder of the area agrees.’.

143 Amendment of s 135 (Chief executive may inquire into applications)

(1) Section 135(1)(a), ‘renewal of, a’—

omit, insert—

‘for the renewal of, a lease, agreement,’.

(2) Section 135—

insert—

‘(4) In this section—

applicant, in relation to an expression of interest, means the person who has submitted to the chief executive the expression of interest.

application, for a lease, agreement, licence permit or other authority, includes an expression of interest for the lease, agreement, licence, permit or other authority.’.

19 Section 49 (Compulsory declaration of nature refuge)

144 **Insertion of new ss 184A and 184B**

After section 184—

insert—

‘184A Provision to allow horse riding in particular former forest reserves until 24 November 2013

- ‘(1) This section applies if a forest reserve prescribed under a regulation is dedicated as a national park (recovery).
- ‘(2) Despite sections 15, 19A and 34,²⁰ a regulation may, until 23 November 2013, authorise a person to carry out horse riding in the national park (recovery).
- ‘(3) This section expires on 23 November 2013.

‘184B Provision for stock grazing permits for former SEQFA forest reserves

- ‘(1) This section applies if—
 - (a) land in an SEQFA forest reserve is, after the commencement of this section, dedicated as a national park or national park (recovery); and
 - (b) immediately before the dedication, a stock grazing permit (the *former permit*) under the *Forestry Act 1959*, section 35,²¹ was in force for the land.
- ‘(2) On the dedication—
 - (a) the former permit ends; and
 - (b) the chief executive is taken to have granted the holder of the former permit a previous use authority under section 36.²²
- ‘(3) The previous use authority is taken to—

20 Sections 15 (Management of protected areas), 19A (Management principles of national parks (recovery)) and 34 (Leases etc. over protected areas)

21 *Forestry Act 1959*, section 35 (Granting of permit for land within State forest)

22 Section 36 (Authorities for new national park or national park (recovery))

- (a) allow the use of the land, as provided for under the former permit, to continue only for the rest of the term stated in the permit; and
- (b) require its grantee to continue to comply with all conditions of the former permit and requirements under the *Forestry Act 1959*, or of the chief executive of the department in which that Act is administered, that relate to stock grazing permits or the use as if—
 - (i) the former permit had continued in force; and
 - (ii) the land were land in an SEQFA forest reserve.

‘(4) In this section—

SEQFA forest reserve means a forest reserve the dedication of which was in force immediately before the commencement of this definition.’.

145 Amendment of schedule (Dictionary)

(1) Schedule—

insert—

‘authorised person means any of the following—

- (a) the chief executive, performing functions under this Act;
- (b) a public service employee of the department performing functions under this Act for the chief executive;
- (c) a conservation officer who is not an employee of the department and who is performing functions under this Act for the chief executive.’.

(2) Schedule, definition *State land*, paragraph (c), after ‘*Land Act 1994*’—

insert—

‘, unless the land is in a forest reserve’.

‘37 Council may give exemption certificate without application

- ‘(1) The council may give a person an exemption certificate to carry out, on a registered place, development mentioned in section 35(5) if the person is—
- (a) the owner of the registered place; or
 - (b) a local government or government entity who is the trustee of the registered place.
- ‘(2) The exemption certificate may be given at any time and without the person having applied under section 35.’.

149 Amendment of s 38 (Exemption certificate for liturgical purposes)

Section 38, ‘section 35(4)(b)’—

omit, insert—

‘section 35(5)(b)’.

150 Amendment of s 39 (Heritage agreements)

Section 39—

insert—

- ‘(5) In this section—
- owner*, of a registered place, includes a local government or government entity who is the trustee of the place.’.

151 Amendment of schedule (Dictionary)

Schedule—

insert—

‘*government entity* see the *Public Service Act 1996*, section 21.’.

Part 11 **Amendment of Statutory Instruments Act 1992**

152 Act amended in pt 11

This part amends the *Statutory Instruments Act 1992*.

153 Amendment of sch 2A (Subordinate legislation to which part 7 does not apply)

Schedule 2A, after entry for Weapons Categories Regulation 1997—

insert—

‘a management plan under the *Wet Tropics World Heritage Protection and Management Act 1993*’.

Part 12 **Amendment of Wet Tropics World Heritage Protection and Management Act 1993**

154 Act amended in pt 12 and schedule

- (1) This part amends the *Wet Tropics World Heritage Protection and Management Act 1993*.
- (2) The schedule also includes amendments of that Act.

155 Amendment of s 4 (Definitions)

- (1) Section 4, ‘In this Act—’
omit, insert—
‘The dictionary in schedule 3 defines particular words used in this Act.’.
- (2) Section 4, definition *agreement*, ‘16 November 1990’—

omit, insert—

‘15 December 1995’.

- (3) Section 4, definitions *native wildlife, plant, rare wildlife and threatened wildlife*, ‘section 7’—

omit, insert—

‘schedule’.

- (4) Section 4, definitions, as amended under this section—
relocate to schedule 3, as inserted under this Act.

156 Amendment of s 53 (Review of plans)

Section 53(1)—

omit, insert—

- ‘(1) The authority must review the operation of each management plan—
- (a) no later than 10 years after its approval; and
 - (b) before the end of each subsequent period of 10 years after its approval.’.

157 Replacement of sch 1 (Wet tropics world heritage area management scheme)

Schedule 1—

omit, insert—

**‘Schedule 1 Management scheme
intergovernmental
agreement for the Wet
Tropics of Queensland
World Heritage Area**

schedule 3, definition *agreement*

Background

The broad basis for the establishment of a management scheme for the Wet Tropics of Queensland World Heritage Area was the Agreement signed by the Prime Minister and the Premier of Queensland in November 1990. This Agreement sets out broad structural and funding arrangements for the management scheme.

The *Wet Tropics World Heritage Protection and Management Act 1993* (Queensland) was subsequently developed in close cooperation with the Commonwealth and commenced (with the exception of ss.56 and 57) on 1 November 1993. Complementary Commonwealth legislation, *Wet Tropics of Queensland World Heritage Area Conservation Act 1994* (Commonwealth) commenced on 15 March 1994.

Apart from the development of legislation, a number of other changes necessitate updating of the original Agreement. These include changes to public service arrangements in Queensland, practical arrangements which have evolved in relation to the management of the Area and the expiry of the three year period to which some of the initial funding arrangements applied.

As the original Agreement forms a schedule to the Queensland Act, and is referred to in the Commonwealth Act, it is important that it be updated to reflect both practical and statutory realities.

Primary Goal

To provide for the implementation of Australia's international duty for the protection, conservation, presentation, rehabilitation and transmission to future generations of the Wet Tropics of Queensland World Heritage Area within the meaning of the World Heritage Convention.

Structure of the Management Scheme

The elements of the management scheme are the—

- Ministerial Council, consisting of Commonwealth and State Ministers;
- Wet Tropics Management Authority consisting of a Board of Directors, an Executive Director and staff; and
- Community Consultative Committee, the Scientific Advisory Committee and such other advisory committees as the Authority considers appropriate.

With the exception of the Ministerial Council, all of these elements are established under the Queensland Act.

Wet Tropics Ministerial Council

The joint Ministerial Council will comprise four members, with two members each nominated by the Commonwealth and Queensland. The Ministerial Council will be chaired by the Minister administering the Queensland Act (a Queensland Minister).

The Executive Director of the Wet Tropics Management Authority will be Secretary to the Ministerial Council.

A quorum shall be one Minister from each Government and the Council will meet at least once a year.

The Ministerial Council's function shall be to co-ordinate policy and funding for the Wet Tropics of Queensland between the Commonwealth and Queensland Governments at a Ministerial level and, where appropriate, to liaise with the Management Authority and the Board of Directors.

The Ministerial Council—

- shall nominate the Chairperson of the Board of the Authority for appointment under the Queensland Act by the Queensland Governor in Council;
- shall consult with the Board of the Authority and the Queensland Minister on the appointment of the Executive Director of the Authority;
- shall co-ordinate policy and funding for Wet Tropics management between the two Governments;
- shall recommend to the Queensland Governor in Council approval of management plans under the Queensland Act;
- shall approve annual and other programs for implementing approved management plans;
- may recommend financial appropriations from the respective Governments;
- shall approve or amend and approve draft budgets submitted by the Authority within 60 days of the submission being made; and
- may approve Authority annual reports for transmission to both Parliaments.

Wet Tropics Management Authority

The Wet Tropics Management Authority is a statutory body under the Queensland Act. The Authority has a Board of Directors, an Executive Director and staff.

Board of Directors

The Board will comprise six directors. The Chairperson shall be appointed on the nomination of the Ministerial Council. Two directors shall be appointed on the nomination of the Commonwealth and two on the nomination of the State. The Executive Director of the Authority is also a director of the Board but does not have any voting rights. Other than the

Executive Director, directors shall be appointed by the Queensland Governor in Council.

The appointment of a director is for a term of up to three years. A director is eligible for reappointment unless the director has completed six consecutive years as a director. A director nominated by the Commonwealth or the Ministerial Council may be removed from office only after consultation with the Commonwealth or the Ministerial Council respectively.

Persons appointed to the Board shall have qualifications or extensive experience in a field related to the Authority's functions, and shall not be officers of the public service of the Commonwealth or the State.

Under the Commonwealth Act at least one of the Commonwealth's nominees must be an Aboriginal person.

The Commonwealth and Queensland will consult on their nominees prior to appointment by the Queensland Governor in Council.

The Board is responsible for the way in which the Authority performs its functions and exercises its powers. It is the Board's role to decide the objectives, strategies and policies to be followed by the Authority and to ensure that the Authority performs its functions in a proper, effective and efficient way.

The Board may delegate its powers to an advisory committee, a director or an officer or employee of the Authority. The Board may not delegate its powers in relation to management plans or the submission of draft budgets to Ministerial Council.

The Management Authority is subject to the Ministerial Council and will report, via its Chair, to the Council. In the absence of a properly appointed Board at any time, such reporting shall be through the Authority's Executive Director as Secretary to Council.

The Board shall meet at least four times per year. Authority resolutions and recommendations to Ministerial Council shall be made through a majority vote. The Chair shall have a casting vote as well as a deliberative vote.

Where circumstances necessitate, it shall be acceptable for the Chair of the Board, in consultation with the Executive Director, to make recommendations to the Ministerial Council on behalf of the Authority. The Secretary to the Ministerial Council may, under specific direction of the Council or Council members, present material or make recommendations directly to Council.

Observers

One official from each of the portfolios represented on Ministerial Council may attend Board meetings as an observer. These officials will be nominated by the respective Ministers of those portfolios. Chairpersons of the Community Consultative Committee and the Scientific Advisory Committee may also attend Board meetings as observers. Observers will not have voting rights.

Authority's Powers and Functions

The Authority's paramount function will be the responsibility for achieving the primary management goal—the implementation of Australia's international obligations for the Area under the World Heritage Convention.

The Authority's functions are to—

- develop and implement policies and programs in relation to the management of the Wet Tropics Area;
- formulate performance indicators for the implementation of policies and programs approved by the Ministerial Council;
- advise and make recommendations to the Queensland Minister and the Ministerial Council in relation to the management of the Area and Australia's obligations under the World Heritage Convention;
- prepare and ensure the implementation of management plans for the Area;
- administer funding arrangements in relation to the Area;

- enter into, and facilitate the entering into, cooperative management agreements (including joint management agreements) with land-holders, Aboriginal people particularly concerned with land in the Area and other persons;
- enter into arrangements for the provision of rehabilitation and restoration works in relation to any land in the Area;
- gather, research, analyse and disseminate information on the Area;
- develop public and community education programs in relation to the Area;
- promote the Area locally, nationally and internationally;
- liaise with the Governments and authorities of the State, the Commonwealth, other States and the Territories, and international and foreign organisations and agencies;
- monitor the state of the Area; and
- advise and report to the Queensland Minister and the Ministerial Council on the state of the Area.

The functions of the Authority to advise, report to and make recommendations to the Minister and the Ministerial Council may be performed by the Authority on request or on its own initiative.

A cooperative management Agreement may make provision for financial, scientific, technical or other assistance in relation to the management of the Area.

The Authority must perform its functions in a way that is consistent with the protection of the natural heritage values of the Area. Subject to this requirement, in performing its functions, the Authority must, as far as practicable, have regard to the Aboriginal tradition of, and liaise and cooperate with, Aboriginal people particularly concerned with land in the Area.

Subject to performing its functions in a way which is consistent with the protection of the natural heritage values of the Area, the Authority must, as far as practicable, also

perform its functions in a way that is consistent with the objectives and principles of the National Strategy for Ecologically Sustainable Development and with the Intergovernmental Agreement on the Environment.

The Area is large and extremely complex in terms of tenure and use. Some people live in the Area and many live near to it. Many people and groups visit the Area, have a legitimate stake in its management, and a potentially profound effect on its future. The Authority will be mindful of this in meeting the primary goal.

In this context the Authority will work in partnership with the community as a means of building a sense of ownership and sharing both the benefits and burdens of sound management. In particular, the Authority will consult with the community, both through its committees and directly and extensively on matters with significant community impact, such as management plans.

The Authority will also endeavour, through its policies, programs and consultation, to meet the spirit of the World Heritage Convention by giving the Area a role in the life of the community.

A high priority function of the Authority will be the development of comprehensive statutory management plans for the Area which fully address Australia's international obligations.

As an important mechanism for protecting the Area and ensuring Australia's international obligations are met, the Authority will also be responsible for ensuring that otherwise prohibited activities are permitted only under appropriate circumstances.

Executive Director

The Executive Director is to be appointed under the *Public Service Management and Employment Act 1988* (Queensland) after consultation between the Ministerial Council and the Board.

The Executive Director is, under the Board, to manage the Authority. Anything done in the name of, or on behalf of, the Authority by the Executive Director is taken to have been done by the Authority.

The Executive Director is a director of the Board and may (subject to disclosure of interests as appropriate) take part in any of the Board's deliberations but has no voting rights at a meeting of the Board. The Executive Director holds the position of Secretary to the Ministerial Council. The Executive Director of the Authority shall identify a suitable senior member of Authority staff to function as Secretary to the Authority.

The Executive Director will develop, co-ordinate, implement and monitor, subject to the approval of the Board and the Ministerial Council, policies, plans and programs in order to meet the primary goal.

Performance appraisal of the Executive Director shall be the responsibility of the Board. The Board may undertake performance appraisal itself or through contractual arrangements with the Department administering the Queensland Act or other suitable Department.

The principal functions and responsibilities of the Executive Director shall be in accordance with the Authority's functions, as set out above.

In addition, the Executive Director will be responsible for—

- managing the Authority under the Board;
- administering the Queensland Act and any relevant regulations in force;
- coordinating all secretariat and operational support for the Ministerial Council, Board and official Committees;
- involving the community in the management of the World Heritage Area;
- liaising with Government agencies and Local Government authorities whose responsibilities affect or are affected by the management of the Area;

- liaising with Aboriginal people particularly concerned with the land;
- preparing and maintaining a comprehensive database of management related information concerning all aspects of the Area;
- developing mechanisms for facilitating and enhancing the appreciation and enjoyment of the Area by the public at large;
- directing all activities of Authority staff;
- exercising powers under relevant legislation including delegated powers from the Ministerial Council or from the Board; and
- preparing an annual report for the Board and the Ministerial Council.

Staff of the Authority

Staff of the Authority will be employed under Queensland legislation, and will be designated as staff of the Authority, and not staff of any other Government body.

Commonwealth, Queensland or other State public servants may be seconded to the Authority.

Staff employed by the Authority will be selected and appointed in accordance with Queensland Public Sector Management Commission procedures.

The Authority will establish supporting technical and administrative links with the Department administering the Queensland Act and/or other suitable Departments insofar as this is necessary to implement the primary goal.

The Authority will have sufficient staff with appropriate specialist expertise to ensure implementation of Australia's international obligations under the World Heritage Convention.

Advisory Committees

The Authority will establish a Community Consultative Committee and a Scientific Advisory Committee.

The Authority should ensure advisory Committees are broadly representative of their respective communities and able to channel information and opinion effectively between the community and the Board. In particular, the Authority should ensure that Aboriginal interests are adequately represented on each of its mandatory Committees.

The Authority should, within its human resource and budget constraints, provide adequate resources to its Committees to enable them to function effectively.

The Committees shall report through their chairpersons to the Board of the Authority. Chairpersons of mandatory committees or their delegates shall be invited to attend Board meetings as observers. Chairpersons of other Authority committees shall be invited to attend Board meetings at the discretion of the Board.

Community Consultative Committee

The function of the Community Consultative Committee shall be to advise the Authority on the views of the community on the Authority's policies and programs in relation to the Wet Tropics Area. In addition, the Community Consultative Committee shall disseminate information provided at Committee meetings on matters concerning—

- the attitudes of the various communities of interest to management objectives, plans, policies and actions undertaken by the Authority;
- provision of essential services to communities within and adjacent to the Area;
- provision for acceptable use of the Area compatible with maintaining World Heritage values and integrity; and
- the relationship of non-government agencies to the Authority.

Members of the Community Consultative Committee will have a duty to seek the views of the communities of interest that they represent on relevant issues. Committee members will be expected to advance the views of the community of interest they represent, to the best of their ability and knowledge, rather than their own personal views.

Committee members and especially the chairperson of the Committee will normally be chosen from among residents of northern Queensland. Where public servants are appointed, they will participate in their private capacity.

Scientific Advisory Committee

The function of the Scientific Advisory Committee shall be to advise the Authority on scientific research that will contribute to the protection and conservation of the Area and scientific developments relevant to the protection or conservation of the Area. In addition, the Scientific Advisory Committee shall provide advice on—

- scientific research and monitoring priorities which will contribute to the protection, conservation, rehabilitation and presentation of the Area;
- new information or developments in science relevant to protection, conservation or presentation of the Area;
- scientific basis of management principles and practices;
- appropriateness of research proposed for approval by the Authority and other relevant agencies in terms of scope, quality and relevance to management of the Area;
- maintenance of World Heritage values and integrity of the Area; and
- impacts of proposed developments on the World Heritage values of the Area.

The Scientific Advisory Committee will have powers to co-opt specialist advice.

Other Committees

The Authority may establish such other committees as it considers appropriate. The Authority may specify the functions of such committees, which may include advising the Authority on the suitability of management plans, or on matters generally relating to the management of the Area (including its management having regard to the Aboriginal tradition of Aboriginal people particularly concerned with land in the Area).

On Ground Management

Day to day land management operations including conservation, protection, rehabilitation and interpretation will be coordinated by the Authority, and generally carried out by land-holders and land managers including relevant Queensland agencies. Government agencies will carry out such management in accordance with plans, programs and policies approved by the Ministerial Council. The Authority will do everything in its power to ensure that non-Government land-holders and managers also manage in accordance with such plans, programs and policies.

Coordination of on-ground management operations of Queensland Government agencies will be undertaken through a principal agencies' forum. This will comprise senior regional officers from the Queensland Departments of Environment and Heritage, Primary Industries (Forest Service) and Lands, and other Queensland Government agencies at the discretion of the Executive Director of the Authority. This forum will be chaired by the Executive Director.

The Authority will undertake monitoring of the effectiveness of on-ground operations with reference to Ministerial Council policy and the primary management goal of implementing Australia's international obligations under the World Heritage Convention, and report on these to the Ministerial Council.

Management Plans

The Authority must prepare a management plan for the entire Area (the Wet Tropics Plan) as soon as practicable after the commencement of the Act. The Authority is also empowered to prepare such other management plans as it considers appropriate. A management plan may divide the area in respect of which it is made into management zones.

The Authority must undertake public consultation during the development of management plans and draft plans must be exhibited for public comment. When preparing a draft or final management plan the Authority must consider all submissions properly made to it. The Authority must give a copy of the final plan and a report on all submissions properly made in relation to the plan to the Ministerial Council.

The Queensland Governor in Council may, by regulation, approve a final management plan prepared by the Authority. The approval of the Governor in Council may be made only on the recommendation of the Ministerial Council.

The Authority must review the operation of each management plan not later than seven years after its approval.

The preparation, implementation and review as required of the Wet Tropics Plan and such other plans as it considers necessary will be a high priority for the Authority.

Management plans will take full account of Australia's international obligations, will be based on a comprehensive data base of management-oriented information, and will incorporate recognised scientific and conservation principles.

Management plans will prevail over Local Government planning schemes to the extent of any inconsistency. A local authority must not issue or give any approval, consent, permit or other authority, in relation to a development on land in the Area, that is inconsistent with a management plan.

Prohibited Acts

A person must not do or attempt to do a prohibited act in relation to land within the Area unless the person is the holder of a licence, permit or other authority—

- issued or given by the Authority under a regulation; or
- issued or given under the *Mineral Resources Act 1989* (Queensland); or
- issued or given by the Governor in Council under another Queensland Act; or
- issued or given under the *Commonwealth World Heritage Properties Conservation Act 1983*.

Prohibited acts will include—

- in relation to a forestry operation
 - (a) destruction of forest products (i.e. a native plant, or part thereof); or
 - (b) construction or establishment of a road or vehicular track; or
 - (c) carrying out excavation works; or
- destroying a forest product unless exempted under a regulation.

Legislative Arrangements

The management scheme will be based on the Queensland Act and the Commonwealth Act.

This Agreement is scheduled to the Queensland Act and referred to in the Commonwealth Act. To remove any doubt, the Agreement referred to in each of these Acts is the currently most up-to-date version of this Agreement, notwithstanding any reference in either Act specifically to the original Agreement.

Review of Management Arrangements

The Ministerial Council may conduct reviews at three yearly intervals (or such other period as it deems appropriate) of the effectiveness of the management scheme and this Agreement in meeting the primary goal. The Ministerial Council may agree on changes to the scheme or this Agreement to improve their effectiveness.

In conducting any such reviews, the Ministerial Council will have particular regard to—

- progress in the development and implementation of any statutory management plans;
- land tenure issues; and
- other relevant matters drawn to its attention by the Authority and the principal land-holders.

Funding Arrangements

Funding arrangements will continue under an exchange of letters by the State and Commonwealth Environment Ministers until such time that the new Financial Agreement has been signed by those Ministers. Funds will be appropriated to the Authority in accordance with programs and budgets approved by the Ministerial Council.

Addresses

The address of the Commonwealth Government for the purposes of the Agreement shall, unless otherwise notified in writing by the Commonwealth to Queensland, be—

Secretary

Department of the Environment, Sport and Territories

GPO Box 787

CANBERRA ACT 2601

The address of the Queensland Government for the purposes of the Agreement shall, unless otherwise notified in writing by Queensland to the Commonwealth, be—

Director-General

Department of Environment and Heritage

PO Box 155

BRISBANE ALBERT STREET QLD 4022

Part 13

Other amendments of Acts

159 Amendments in schedule

The schedule amends the Acts it mentions.

Schedule Minor amendments

sections 5(2), 12(2), 99(2), 130(2) and 159

Coastal Protection and Management Act 1995

- 1 Schedule, definition *wildlife*, ‘section 7’—**
omit, insert—
‘schedule’.

Environmental Protection Act 1994

- 1 Section 90, note, ‘on offence or in action’—**
omit, insert—
‘of an offence or an action’.
- 2 Section 96, heading, ‘applications’—**
omit, insert—
‘application’.
- 3 Section 131(1), note, ‘of the authority’—**
omit, insert—
‘of a code compliant authority’.
- 4 Section 140(2), ‘a stated a stated’—**
omit, insert—
‘a stated’.

Schedule (continued)

5 Section 426(3)—*omit.***6 Section 594, ‘427’—***omit, insert—*

‘426’.

Forestry Act 1959**1 Section 58(1), from ‘Fire and’ to ‘part 7’—***omit, insert—*‘*Fire and Rescue Service Act 1990*, part 7.’.**2 Sections 62(1), 63(1)(b), 64(1), 65(2), (3) and (4), 68, 69(1), and (3) and 102(1)(c), ‘Fire and Rescue Authority Act 1990’—***omit, insert—*‘*Fire and Rescue Service Act 1990*’.**Nature Conservation Act 1992****1 Section 27(2)(a)(i), before ‘2004’—***insert—*

‘Act’.

2 Section 175(2)(b) second paragraph (q)—*renumber* as section 175(2)(r).

Schedule (continued)

Petroleum Act 1923

1 Section 4, ‘79QA’—

omit, insert—

‘70QA’.

Petroleum and Gas (Production and Safety) Act 2004

1 Section 6A, ‘79QA’—

omit, insert—

‘70QA’.

**Wet Tropics World Heritage Protection and
Management Act 1993**

1 Schedule 1, heading, ‘section 4’—

omit, insert—

‘schedule 3’.