Environmental Protection and Other Legislation Amendment Bill 2007

Explanatory Notes

General Outline

Short Title

The short title of the Bill is the *Environmental Protection and Other Legislation Amendment Bill 2007*.

Policy Objectives of the Legislation

The principal objectives of the Bill are to:

1 amend the protected plants sections of the *Nature Conservation Act 1992* to provide for tiered penalties to better reflect the nature and severity of the offence;

2 insert a new provision into the *Nature Conservation Act 1992* to enable continuity of stock grazing for a limited time and in certain circumstances where South-East Queensland Forests Agreement (SEQFA) lands become national parks;

3 amend devolution powers to improve the flexibility for Local Governments in administering their responsibilities under the *Environmental Protection Act 1994*; and

4 make minor technical, administrative and grammatical corrections to the Acts listed below to streamline Agency business.

Reasons for the Bill

There is a need for a portfolio Bill to enable a number of miscellaneous amendments to be made to the following Acts:

- *Coastal Protection and Management Act 1995*;
- *Environmental Protection Act 1994*;

- *Nature Conservation Act 1992*;
- *Recreation Areas Management Act 2006*; and
- *Wet Tropics World Heritage Protection and Management Act 1993*.

In addition to the principal objectives, these amendments will provide for:

a. *Coastal Protection and Management Act 1995*

- amending the definition of "tidal waters" so the downstream limit declared under the *Water Act 2000* can be recognised by the *Coastal Protection and Management Act 1995*

b. *Environmental Protection Act 1994*

- including the *Exotic Diseases in Animals Act 1981* in the list of legislation which overrides the provisions of the *Environmental Protection Act 1994*
- amending the section which permits the amendment of a development condition to include amendment by consent and pursuant to a transitional environmental program
- providing that, where an operator transfers their business to another operator, the old operator does not need to surrender their registration certificate, but the certificate will expire
- reorganising the grounds for amending registration certificates into separate sections for clarity of drafting
- providing that the decision maker consider whether any fees are outstanding when deciding whether to accept an application to surrender a registration certificate
- ensuring that terminology is consistently referring to the appropriate type of mining activity instead of "code compliant activities"
- explaining that an application under section 248 is processed under Part 5 or Part 6 depending on the type of application
- change to recovery of fees to provide that late notices are not invalid
- renaming of "Environmental Management Programs" to "Transitional Environmental Programs" to remove confusion with Environmental Management Plans

- removal of the words “under Chapter 4” and “under Chapter 5” from section 430 to avoid confusion
- providing that a prosecutor can seek an adjournment and costs if the defence fails to provide a notice under section 498
- clarifying the grounds upon which the prosecution can seek costs under section 503
- removal of the reference to emergency powers from a “dissatisfied person” for appeals
- changing references to “EPP requirement” to “regulatory requirement” and ensuring that compliance with an EPP also includes compliance with a regulation
- amending the regulation-making power to ensure that provisions about environmental management decisions and product labelling can be made in the regulation
- amending the definition of “residual risk” to provide for part of a mining tenement
- clarifying that a non-standard environmental authority is a level 1 mining project, and a standard environmental authority is a level 2 mining project

c. *Nature Conservation Act 1992*

- amending to allow roosts of flying foxes to be moved on only under a permit
- clarifying management plan requirements in section 111 where protected areas have been amended

d. *Recreation Areas Management Act 2006*

- amending section 45 to refer to an “application fee” not a “permit fee” to properly reflect the nature of the fee
- correcting cross-references in sections 252 and 253

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

- amending section 85 to expressly allow for a management plan under the Act to address the subdivision of land

f. Minor technical, administrative and consequential corrections.

Estimated Cost for Implementation

The amendments are to be implemented within current budget allocations.

Consistency with Fundamental Legislative Principles

Section 4 of the *Legislative Standards Act 1992* requires that legislation have sufficient regard to the rights and liberties of individuals. Whether legislation has sufficient regard to the rights and liberties of individuals depends on whether, for example:

- the legislation makes rights and liberties, or obligations, dependant on administrative power only if the power is sufficiently defined and subject to appropriate review;
- the legislation does not reverse the onus of proof in criminal proceedings without adequate justification; or
- the legislation adversely affects right and liberties, or imposes obligations, retrospectively.

No potential breaches of fundamental legislative principles have been identified for the amendments in this Bill.

Consultation

A wide range of public and private sector stakeholders were consulted on the particular amendments relevant to their interests. All government departments were consulted as part of the Cabinet process in developing the Bill.

Feedback was considered as part of the drafting of the Bill.

Notes on Provisions

Part 1 Preliminary

Short title

Clause 1 states that the Act should be cited as the *Environmental Protection and Other Legislation Amendment Act 2007*.

Commencement

Clause 2 provides that certain provisions are to commence on a day to be fixed by proclamation and the rest of the provisions commence on assent.

Part 2 Amendment of Coastal Protection and Management Act 1995

Act amended in pt 2

Clause 3 states that this part amends the *Coastal Protection and Management Act 1995*.

Omission of ch 6, pt 3 (Transitional provisions for Beach Protection Legislation Amendment Act 2003)

Clause 4 omits Chapter 6, part 3.

Amendment of schedule (Dictionary)

Clause 5 amends the definition of “tidal waters” to provide that a downstream limit for the purposes of the *Coastal Protection and Management Act 1995* may be declared under the *Water Act 2000*. Downstream limits are currently declared by the Department of Natural Resources and Water (NRW) under the *Water Act 2000*.

When the definition in the *Coastal Protection and Management Act 1995* was originally amended to refer to the downstream limit, not all downstream limits were declared in the vicinity of the high water mark. Consequently, it was necessary for a separate declaration to be made under the *Coastal Protection and Management Act 1995* to ensure that only appropriate declared downstream limits affected the definition of "tidal water" in the *Coastal Protection and Management Act 1995* (see the explanatory notes to *Environmental Protection and Other Legislation Amendment Bill 2004*, pages 18 and 19).

On 19 July 2006, the EPA entered the "Interagency Procedures for Determining the Position of a Declared Downstream Limit in a Coastal Watercourse" agreement with NRW which ensures that downstream limits as a jurisdictional boundary for both agencies are only declared at locations mutually acceptable to all parties. This agreement therefore removes the need to duplicate the declaration process under the *Coastal Protection and Management Act 1995*. However, current wording in the *Coastal Protection and Management Act 1995* sets the requirement for such limits to be declared under this Act.

Part 3 Amendment of Environmental Protection Act 1994

Act amended in pt 3 and schedule

Clause 6 states that this part and the schedule amends the *Environmental Protection Act 1994*.

Amendment of s 23 (Relationship with other Acts)

Clause 7 inserts a reference to the *Exotic Diseases in Animals Act 1981* into section 23(2). This amendment will allow provisions of the *Exotic Diseases in Animals Act 1981* to prevail over all provisions of the *Environmental Protection Act 1994* to the extent of its inconsistencies. This is to allow the Department of Primary Industries and Fisheries emergency response plans prepared under the *Exotic Diseases in Animals Act 1981* to be implemented without *Environmental Protection Act 1994* regulatory impediments.

Amendment of s 73C (Adding, changing or cancelling a development condition)

Clause 8 inserts a new subsection to enable the administering authority to add, amend or cancel a development condition where it is considered necessary or desirable because of the approval or amendment of a transitional environmental program. This amendment will ensure that an approved transitional environmental program transfers to any new registered operators. If the transitional environmental program is a condition of a development approval, the new registered operator will have notice of the existing transitional environmental agreement by virtue of the development approval and the transitional environmental program will continue to apply as the development approval travels with the land.

Clause 8 also inserts a new subsection to enable the administering authority to change conditions with the consent of the holder of the development approval. This amendment is to permit the administering authority to change conditions with the consent of the holder of the development approval.

This will enable old approvals to be tidied up to remove obsolete conditions, to amend conditions to clarify them, or to insert conditions which assist the developer to comply with the development approval.

These amendments would only be made with the developer's consent, but do not have to be instigated by the developer. Rather they may be identified by the administering authority.

The administering authority had this power under section 130 before the 2003 amendments to the *Environmental Protection Act 1994*. At that stage, section 73C was inserted and was designed to be consistent with the existing section 130 of the *Environmental Protection Act 1994* (see Explanatory Notes to *Environmental Protection Legislation Amendment Bill 2003*, pages 8 and 9). However, the existing section 130(1)(a), which dealt with amendment by consent, was omitted.

Insertion of new s 73GA (Registration certificate expires if new operator registered)

Clause 9 inserts a new section 73GA to clarify that a surrender application is not necessary for an application for a "continuing chapter 4 activity". Where a business which encompasses an environmentally relevant activity has been sold, the development approval travels with the land and is not required to be transferred. However, the registration certificate is personal

to the operator and cannot be transferred. The new operator (the person buying the business) must apply for a new registration certificate for any environmentally relevant activities which will continue on the premises.

As this is an application for a registration certificate for continuing chapter 4 activities, it is effectively considered to be a 'transfer' (note: see the explanatory notes to *Environmental Protection Legislation Amendment Act 2003*, pages 10 and 11) and the liability transfers to the new operator once activities commence under the new operator's registration certificate.

However, there has been confusion among internal and external stakeholders about whether the old operator (the person selling the business), must surrender their registration certificate under section 73O of the *Environmental Protection Act 1994*.

The proposed amendment is to clarify that where a business has been transferred to a new operator, who has applied for a registration certificate for continuing chapter 4 activities, the original operator does not have to surrender their registration certificate as the registration certificate will automatically expire upon the grant of the new registration certificate.

Replacement of ch 4, pt 3 (Amending registration certificate)

Clause 10 omits chapter 4, part 3 and replaces it with a new chapter 4, part 3 which is split into discrete sections for easier reading.

In addition, the following provisions have been added:

- The ability to amend the registration certificate by agreement. This will enable the EPA to clean up old licences without requiring the operator to make an application to amend the registration certificate;
- The new section 73HC is reworded from section 73H, but the provision has been clarified by linking it to section 73F; and
- Permitting amendment of the old registration certificate by removing an activity where a new registration certificate has been issued for that activity for a continuing chapter 4 activity. This is a consequential amendment to the insertion of section 73GA.

References to "at any time" have been removed for consistency with current drafting practices and it is not intended that removing these words will alter the meaning.

Amendment of s 73O (Surrendering a registration certificate)

Clause 11(1) and (2) amends the term “environmental management program” to “transitional environmental program”. The close terminology of “environmental management program” to “environmental management plan” had been causing some confusion, especially when using the acronym EMP. Clauses 11(1) and (2) do not change the nature or intent of an “environmental management program” but uses the term “transitional environmental program” to better reflect the nature and intent of the document.

Clause 11(3) adds in an extra consideration in section 73O so that any outstanding fees are considered as part of the decision-making criteria. Currently, a person could apply to surrender a registration certificate even if outstanding annual fees have not been paid. As a result of the above amendment, a person would only be surrendering their registration certificate if they were ceasing activities. Consequently, a company may cease activities and be deregistered before court action to recover fees is commenced. It may be desirable in some circumstances to permit the surrender even though fees are outstanding (for example, for business expediency or where a person is surrendering their registration certificate because they cannot afford to pay outstanding fees and do not wish to incur further debt), but the outstanding fees should be a consideration for the decision maker to take into account in deciding whether or not to accept the surrender.

Amendment of s 151 (What is a *level 1 mining project* and a *level 2 mining project*)

Clause 12 amends the two references to “code compliant authority” to refer to the appropriate type of authority. When the concept of code compliant authorities was introduced, this section was significantly changed to remove the former discretion in deciding whether a mining activity was level 1 (non-standard) or level 2 (standard). The section now defines these levels (for projects) solely on the basis of criteria in Schedule 1A of the *Environmental Protection Regulation 1998*, except for some specific cases such as significant projects or Wild Rivers areas.

The criteria in Schedule 1A of the *Environmental Protection Regulation 1998* relate to the level 1 / level 2 decision and not to whether a project is code compliant (as that depends on the project being level 2 and being able to comply with all the standard conditions in the relevant code). The

reference in Section 151(1)(a) and 151(2)(b)(i) to “code compliant authority” is incorrect. Code compliance is defined in Section 148 and 154.

Amendment of s 154 (General requirements for application)

Clause 13 amends the two references to “code compliant authority” to refer to the appropriate type of authority. This is consequential to the amendment to section 151.

Amendment of s 248 (Notice of EIS requirement)

Clause 14 adds paragraphs (c) and (d) to section 248 that stipulates that:

- if the application involves amendments to an environmental authority for an exploration permit or mineral development licence, it will be processed under Part 5; or
- if the application involves amendments to an environmental authority for a mining lease, it will be processed under Part 6.

Prior to commencement of *Environmental Protection and other Legislation Amendment Act 2004*, an EIS requirement required a new application to be made and that would be processed under Chapter 5 Part 5 or Chapter 5 Part 6 depending on whether the application was for an exploration permit/ MDL or mining lease. There is now a lack of clarity regarding what process should be followed if an EIS requirement is made. This amendment will prescribe that the process is set out in the Notice given by the administering authority.

Amendment of s 260A (Additional requirement for transfer application for code compliant authority if not amendment application made)

Clause 15 amends the two references to “code compliant authority” to refer to the appropriate type of authority. This is consequential to the amendment to section 151.

Amendment of s 316 (Annual fee and return)

Clause 16 inserts a new subsection (6) into section 316 that provides that failure to give a notice within the specified time does not affect the validity of the notice. This section requires the administering authority to issue an annual notice stating the fee to be paid and the operator must comply with

the notice. The section needs to be clarified to provide that the administering authority can recover unpaid annual fees even if the administering authority has not sent a notice within the required time. The administering authority must still give 20 business days for the fee to be paid.

Consequently, section 316 is to be amended to clarify that the operator is still liable for the annual fee even if the administering authority has not sent out the annual notice within the prescribed time. The statute of limitations of 6 years from when the debt arose will not be affected.

Amendment of s 322 (When environmental audit required)

Clause 17 amends the term “environmental management program” to “transitional environmental program”. The close terminology of “environmental management program” to “environmental management plan” had been causing some confusion, especially when using the acronym EMP. Clause 17 (1) does not change the nature or intent of an “environmental management program” but uses a different term to better reflect the nature and intent of the document.

Clause 17 also amends section 322 to ensure that a reference to an environmental protection policy also refers to a regulation. As part of the project to remake the *Environmental Protection (Air) Policy 1997*, the *Environmental Protection (Water) Policy 1997* and the *Environmental Protection (Noise) Policy 1997* (the EPPs) and the *Environmental Protection Regulation 1998* (EP Reg), the provisions relating to the procedures for environmental management decisions and product labelling requirements are to be moved from the EPPs to the EP Reg.

Amendment of s 338 (Criteria for deciding draft program)

Clause 18 omits subsection (a) from section 338(1) and replaces it with alternative words that are designed to encompass criteria whether they are placed in an environmental protection policy, or in a regulation. *Regulatory requirement* is defined in the Dictionary in Schedule 3 of the *Environmental Protection Act 1994*.

Amendment of s 346 (Effect of compliance with program)

Clause 19(1) amends the term “environmental management program” to “transitional environmental program”. The close terminology of “environmental management program” to “environmental management

plan" had been causing some confusion, especially when using the acronym EMP. Clause 19(1) does not change the nature or intent of an "environmental management program" but uses a different term to better reflect the nature and intent of the document.

Clauses 19(2) and (3) amend section 346 to ensure that a reference to an environmental protection policy also refers to a regulation. As part of the project to remake the *Environmental Protection (Air) Policy 1997*, the *Environmental Protection (Water) Policy 1997* and the *Environmental Protection (Noise) Policy 1997* (the EPPs) and the *Environmental Protection Regulation 1998* (EP Reg), the provisions relating to the procedures for environmental management decisions and product labelling requirements are to be moved from the EPPs to the EP Reg.

Amendment of s 358 (When order may be issued)

Clause 20(1) amends the term "environmental management program" to "transitional environmental program". The close terminology of "environmental management program" to "environmental management plan" had been causing some confusion, especially when using the acronym EMP. Clause 20(1) does not change the nature or intent of an "environmental management program" but uses a different term to better reflect the nature and intent of the document.

Clause 20(2) amends section 358 to ensure that a reference to an environmental protection policy also refers to a regulation. As part of the project to remake the *Environmental Protection (Air) Policy 1997*, the *Environmental Protection (Water) Policy 1997* and the *Environmental Protection (Noise) Policy 1997* (the EPPs) and the *Environmental Protection Regulation 1998* (EP Reg), the provisions relating to the procedures for environmental management decisions and product labelling requirements are to be moved from the EPPs to the EP Reg.

Amendment of s 430 (Contravention of condition of environmental authority)

Clause 21 removes the words "under Chapter 5" in sections 430(2)(a) and s430(3)(a) and "under Chapter 4A" in sections 430(2)(b) and s430(3)(b). When the *Environmental Protection and other Legislation Amendment Act 2004* rearranged this section to accommodate petroleum authorities by amendments which commenced on 1 January 2005, the Chapters in which certain environmental authorities are defined were not correctly stated. For

example in section 430(2)(b) the reference to Chapter 4A should follow petroleum activity and not relate to a level 2 mining project.

To ensure this section can be used for enforcement actions, the references to Chapters in section 430 have been removed. Environmental authorities for petroleum activities and mining activities are adequately defined in the Act.

Amendment of s 441 (Offences of contravention of environmental protection policies)

Clause 22 amends section 441 to ensure that a reference to an environmental protection policy also refers to a regulation. As part of the project to remake the *Environmental Protection (Air) Policy 1997*, the *Environmental Protection (Water) Policy 1997* and the *Environmental Protection (Noise) Policy 1997* (the EPPs) and the *Environmental Protection Regulation 1998* (EP Reg), the provisions relating to the procedures for environmental management decisions and product labelling requirements are to be moved from the EPPs to the EP Reg.

Amendment of s 442 (Offence of releasing prescribed contaminant)

Clause 23 amends section 442 to ensure that a reference to an environmental protection policy also refers to a regulation. As part of the project to remake the *Environmental Protection (Air) Policy 1997*, the *Environmental Protection (Water) Policy 1997* and the *Environmental Protection (Noise) Policy 1997* (the EPPs) and the *Environmental Protection Regulation 1998* (EP Reg), the provisions relating to the procedures for environmental management decisions and product labelling requirements are to be moved from the EPPs to the EP Reg.

Amendment of s 498 (Notice of defence)

Clause 24 inserts a further subsection which provides that if the defendant fails to give the notice as required by subsection (1), the prosecutor may obtain an adjournment of the hearing with costs. Section 498 provides that a defendant to a prosecution under the *Environmental Protection Act 1994* must give written notice to the prosecutor of a defence in Chapter 8 they intend to rely on. Defences in Chapter 8 are defences that relate to the specific offence with which the defendant is charged. For example, the holder of an environmental authority commits an offence if they fail to

ensure that a person acting under their authority complies with the conditions of the authority. However, it is a defence for the holder to prove that they issued appropriate instructions and used all reasonable precautions etc.

However, while section 498 provides that the defendant must give the notice, there is no guidance as to the consequences if the defendant does not in fact give the notice. This could lead to inconsistent decisions by the court as to the effect of such a failure. This amendment is to clarify that the appropriate consequences are that the prosecutor may obtain an adjournment and claim the costs incurred as a result of the defendant's failure to notify.

Amendment of s 503 (Recovery of costs of investigation)

Clause 25 deletes the words "including, for example, taking any sample or conducting any inspection, test, measurement or analysis during the investigation" and moves them to a separate subsection which specifies that they do not limit the power to recover costs. The original Explanatory Notes to the *Environmental Protection Act 1994* (p.33) described this provision as providing "that the reasonable costs of investigation are recoverable by the administering authority from an offender convicted of an offence under this Act". There was no apparent intention to restrict the words "costs and expenses in investigating the offence".

However the effect of the inserted words "including, for example, taking any sample or conducting any inspection, test, measurement or analysis during the investigation" has lead to a restricted interpretation of the section by the courts (*The Queen v North Queensland Oil Pty Ltd & Rohan* [2002] unreported decision of Pack DCJ). Removal of these words is necessary to return to the original unrestricted meaning of this section.

Clause 25 also replaces the words "administering authority" with the word " prosecution". The *Environmental Protection Act* 1994 was written to be consistent with the general law allowing private citizens to bring private prosecutions and that the "community must have an important role in ensuring that the objectives of the Act are achieved" (original Explanatory Notes at p.3).

In practice, there have been no private prosecutions by citizens or action groups and there is no identifiable reason why this might change. However, local governments have brought private prosecutions in circumstances where they do not technically fall within the definition of "administering authority" pursuant to section 514.

Replacement of the words “administering authority” with “prosecution” simply ensures that there is no artificial constraint on any persons (including local government) contemplating private prosecutions.

Amendment of s 514 (Devolution of powers)

Clause 26(1) amends s 514(6) so that Local Governments will be able, by a resolution or local law, to prescribe a different fee, whether higher or lower, for something for which a fee is prescribed under a regulation. The *Local Government Act 1993* contains requirements for fixing of regulatory fees by Local Governments.

Clause 26(2) inserts a new subsection 514(6A) which enables a Local Government to make an environmental nuisance local law which is inconsistent with a regulation under the *Environmental Protection Act 1994*. The requirement under subsection (5)(b) that the local law not be inconsistent with the Act does not apply. Therefore the local law will take precedence over a regulation, even if it is inconsistent with the regulation. As the *Environmental Protection Act 1994* specifically provides for the local law to be inconsistent with the regulation, section 31 of the *Local Government Act 1993,* which provides that *“if a State law and a local law are inconsistent, the State law prevails over the local law to the extent of the inconsistency”* does not apply and the nuisance local law, if inconsistent with the regulation, will take precedence over the regulation.

Amendment of s 520 (Dissatisfied person)

Clause 27 corrects an inconsistency in the appeal provisions. A decision by an authorised person to direct a person to take emergency action was not included as an original decision in the new “Schedule 1 Original Decisions” (see s 53 of Act 64/2000), but was erroneously left in section 520. Clause 27 omits the reference from section 520.

Amendment of s 551 (Definitions for pt 2)

Clause 28 amends the term “environmental management program” to “transitional environmental program” and the acronym “EMP” to “TEP”. The close terminology of “environmental management program” to “environmental management plan” had been causing some confusion, especially when using the acronym EMP. Clause 28 does not change the nature or intent of an “environmental management program” but uses a different term to better reflect the nature and intent of the document.

Amendment of s 580 (Regulation-making power)

As part of the project to remake the *Environmental Protection (Air) Policy 1997*, the *Environmental Protection (Water) Policy 1997* and the *Environmental Protection (Noise) Policy 1997* (the EPPs), the provisions relating to the procedures for environmental management decisions and product labelling requirements may be moved from the EPPs to the *Environmental Protection Regulation 1998*. The procedures for environmental management decisions under the EPPs provide additional decision making criteria for decisions under the *Environmental Protection Act 1994*, specifically relating to development approvals/environmental authorities for environmentally relevant activities, environmental management programs and environmental protection orders. The procedures for environmental management decisions do not remove or replace the decision making criteria contained in the Act for these decisions, but may add to the matters considered.

It is arguable that there is already sufficient power in the *Environmental Protection Act 1994* to make regulations about environmental management decisions because of the need to comply with an EPP (now regulatory) requirement, but additional matters in subsection (2) have been inserted to ensure that there is no doubt that there is sufficient power in the *Environmental Protection Act 1994* to make a regulation for these purposes.

Clause 29(1) adds the words “Without limiting subsection (1)” to the start of subsection (2). It is common in more recent legislation (for example, section 1014 of the *Water Act 2000*) to have the words “without limiting subsection (1)” at the start of subsection (2) to ensure that the list of matters in subsection (2) expands rather than contracts the regulation-making power.

To remove any doubt about the regulation-making power for the project to remake the EPPs, Clause 29(2) adds sub-paragraphs about procedures for environmental management decisions and product labelling requirements to subsection (2).

Insertion of new ch 13, pt 7, div 4 (Standard and non-standard environmental authorities)

Clause 30 inserts a new division for standard and non-standard environmental authorities.

A standard environmental authority (mining activities) for a standard mining activity in force immediately before commencement of the *Environmental Protection and Other Legislation Amendment Act 2004* is, upon commencement of the *Environmental Protection and Other Legislation Amendment Act 2007*, taken to be an environmental authority (mining activities) for a level 2 mining project.

A non-standard environmental authority (mining activities) for a non-standard mining activity in force immediately before commencement of the *Environmental Protection and Other Legislation Amendment Act 2004* is, upon commencement of the *Environmental Protection and Other Legislation Amendment Act 2007*, taken to be an environmental authority (mining activities) for a level 1 mining project.

When legislative control of mining became part of the *Environmental Protection Act 1994* in 2001, mining activities were categorised as being standard or non standard. Lower risk activities complying with criteria listed in Schedule 1A of Part 2 of the *Environmental Protection Regulation 1998* were issued with environmental authorities identifying them as standard mining activities.

With the advent of Level 1 and Level 2 definitions in the *Environmental Protection Act 1994* there were no provisions identifying that for the purposes of the Act a standard environmental authority should be now considered as a Level 2 environmental authority and that a non standard environmental authority should now be considered as a Level 1 environmental authority.

The purpose of this amendment is to provide a transitional provision to clarify that the old standard environmental authorities for mining activities level 2 mining projects and the old non-standard environmental authorities for mining activities are level 1 mining projects. The amendment legislatively clarifies a cross-referencing problem. The *Environmental Protection and Other Legislation Amendment Act 2004* made an oversight that old licences and associated documents will still use the old terminology.

Insertion of new ch 13, pt 9 (Transitional environmental program)

Clause 31 inserts a new transitional provision for name change from “environmental management program” to “transitional environmental program”. The close terminology of “environmental management program” to “environmental management plan” had been causing some

confusion, especially when using the acronym EMP. Clause 31 does not change the nature or intent of an "environmental management program" but uses a different term to better reflect the nature and intent of the document.

Amendment of sch 3 (Dictionary)

Clause 32 makes minor amendments to the Dictionary definitions by inserting new definitions of:

Continuing chapter 4 activity;

Regulatory requirement;

TEP submission;

Transitional environmental program;

and makes minor amendments to the definition of:

Environmental requirement;

Residual risks;.

Standard criteria

Part 4 Amendment of Nature Conservation Act 1992

Act amended in pt 4

Clause 33 states that this part amends the *Nature Conservation Act 1992*.

Amendment of s 65 (Effect in change of class of protected area)

Clause 34 makes minor amendments to section 65 which are consequential to the amendment to section 111.

Insertion of new s 88C (Restrictions related to flying-foxes and flying-fox roosts)

Clause 35 inserts a new section 88C to clarify that driving a flying-fox from a flying-fox roost is an offence. The intent of the proposed amendments is to ensure that a person intending to move a flying-fox from a flying-fox colony roost site by the deliberate use of sound, light, smoke,

electric current, chemical repellent or other means must be authorised under the Act.

Note –this amendment is only intended to apply to moving colonies from their roost, which is where they congregate from time to time to breed or rear their young. It is not intended to affect moving flying foxes from where they feed and therefore should not apply to activities such as the use of sound and light by orchardists to legitimately scare flying-foxes from fruit crops.

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

Clause 36 amends section 89 to provide a tiered offence regime and to extend the restriction to the taking of a least concern plant. The maximum penalty for the offence is not being increased. Instead, lower level offences will now attract a lower level of maximum penalty.

This amendment will improve practical enforcement of the Act by separating the offence contained in section 89 of the Act into four tiers of offences (class 1 to 4), with different maximum penalties associated with each tier.

The restriction on taking protected plants in the wild is to be extended to restrict the taking of a least concern plant. This provision is currently found in section 7 of the *Nature Conservation (Protected Plants) Conservation Plan 2000* which will be omitted from the Plan.

The defence provision maintains the current defence applicable for an offence against the current section.

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

Clause 37 amends section 90 to provide a tiered offence regime and to extend the restriction to the use of a least concern plant. The maximum penalty for the offence is not being increased. Instead, lower level offences will now attract lower level maximum penalties.

This amendment will improve practical enforcement of the Act by separating the offence contained in section 90 of the Act into two tiers of offences (classes 1 and 2), with different maximum penalties associated with each tier.

The restriction on using protected plants is to be extended to restrict the using of least concern plants. This provision is currently found in section 243 of the *Nature Conservation (Wildlife Management) Regulation 2006*, with a maximum penalty of 165 penalty units, which will be omitted from the Regulation.

The defence provision maintains the current defence applicable for an offence against the current section.

Amendment of s 111 (Management plans)

Clause 38 replaces the existing subsections (2) to (4) with a new single subsection (2) which allows for the continuation or amendment of an existing management plan. At times it is necessary to make a change to a protected area's name, class or extent by removing the existing protected area listing from the relevant regulation and inserting a new entry for the altered protected area.

Removal of the existing protected area listing can render invalid a management plan approved under the *Nature Conservation Act 1992* for that area, or call the plan's validity into doubt. Continued application of the existing plan would avoid the time-consuming and expensive preparation of a new plan.

The proposed amendments are intended to provide two alternatives to the preparation of a new management plan when a change is made to the name, class or extent of a protected area that already has an approved management plan:

(a) the existing management plan can continue to apply to the altered area; or

(b) the existing plan can be amended in order to apply to the altered area.

Additionally, where a management plan continues to apply, it may apply only to a stated extent. For example, an existing management plan could remain a valid plan when a protected area is enlarged, but need not necessarily apply to the newly-added part. This could be necessary if some aspect of the added part's management needs to vary from the plan's requirements.

If a protected area is divided into more than one protected area, the existing management plan could be applied to each of the new areas.

Subsection 111(6) was amended for consistency with the proposed amendments to subsections 111(2) to (4). The intent is that preparation and approval of a plan (including a plan for an aggregation of areas) or amendment of a plan, is to be subject to the procedures in Part 7. The words 'with any necessary changes and any changes prescribed by regulation' were no longer necessary.

Amendment of s 124 (Amendment of plans)

Clause 39 amends section 124 to refer to the Governor in Council approving the amendment of a plan, rather than amending a plan. This more closely reflects the nature of the role played by the Governor in Council in the amendment of plans.

Amendment of s 164 (Indictable and summary offences)

Clause 40 inserts the words "or 89 " after the words "section 88" in subsection (3). Section 89 is being amended to have tiered maximum penalties along similar lines to section 88. Consequently, the reference in subsection (3) to section 88 should also include reference to section 89.

Insertion of new s 173R (Provision for stock grazing in particular national parks)

Clause 41 inserts a provision to permit grazing to continue for a limited time and in limited circumstances where land is transferred from being a SEQFA forest reserve, to a Conservation Park and then to a National Park. More specifically, the provision applies only where a SEQFA forest reserve was dedicated as a Conservation Park immediately before 3 June 2006 and a stock grazing permit, issued under the *Nature Conservation (Administration) Regulation 2006* is in force immediately prior to the land being dedicated as a National Park.

The effect of this section in the above circumstances is that grazing may continue to occur following the dedication of the National Park for the remainder of the term of the stock grazing permit as if that permit were a 'previous use authority' granted under section 36 of the Act. The permit must not be renewed after it expires. The provision is to operate despite sections 15 and 34(2) of the *Nature Conservation Act 1992*.

An SEQFA forest reserve is a forest reserve which was in force immediately before the commencement of the other transitional provision to permit stock grazing permits for former SEQFA forest reserves (section

184B). This section was inserted by the *Environmental Protection and Other Legislation Amendment Act 2005*, which commenced on 18 November 2005.

Amendment of schedule (Dictionary)

Clause 42 makes minor amendments to the Dictionary definitions by amending the definition of:

World Heritage Convention.

Part 5 Amendment of Recreation Areas Management Act 2006

Act amended in pt 5

Clause 43 states that this part amends the *Recreation Areas Management Act 2006*.

Amendment of s 45 (How to obtain a group activity permit)

Clause 44 replaces the term ‘permit fee’ with ‘application fee’. The term ‘permit fee’ is erroneous in this section. It is intended that a person pay the application fee before the permit is decided (regardless of whether or not the permit is granted).

In addition, the term ‘permit fee’ is inconsistent with the *Recreation Areas Management Regulation 1989* (refer schedule 1, item 10a ‘application fee’) and the *Nature Conservation (Administration) Regulation 2006* (refer schedule 3, item 11a ‘application fee’). Changing ‘permit fee’ to ‘application fee’ is required for consistency.

Amendment of s 252 (Amendment of Mineral Resources Act 1989)

Clause 45 corrects a cross reference. Section 252 refers to the *Recreation Areas Management Act 2005*, while it should refer to the *Recreation Areas Management Act 2006*.

Replacement of s 253 (Amendment of Police Powers and Responsibilities Act 2000)

Clause 46 corrects a cross reference. Section 253 refers to the *Recreation Areas Management Act 2005*, while it should refer to the *Recreation Areas Management Act 2006*.

In addition, cross references to the relevant sections of the *Police Powers and Responsibilities Act 2000* have been corrected. A reference to section 61(e) of the *Police Powers and Responsibilities Act 2000* has been replaced with the correct references to sections 125(e) and 138(e).

Part 6 Amendment of Wet Tropics World Heritage Protection and Management Act 1993

Act amended in pt 6

Clause 47 states that this part amends the *Wet Tropics World Heritage Protection and Management Act 1993*.

Amendment of s 85 (Regulations)

Clause 48 inserts an additional subsection (2)(la) that a regulation may be made to regulate the subdivision of land or reconfiguration of a lot in the Wet Tropics area.

The Authority proposes to regulate subdivision in the Wet Tropics World Heritage Area under the *Wet Tropics Management Plan 1998* to ensure subsequent developments do not adversely affect World Heritage values.

Section 41(4) provides that a management plan may make provision for any matter for which a regulation may be made under this Act.

Section 85 does not currently specify that a regulation may be made to regulate the subdivision or reconfiguration of a lot in the wet tropics area.

Amendment of sch 3 (Dictionary)

Clause 49 inserts a new definition for “reconfiguring a lot”. This is consequential to the amendment to section 85.

Schedule 1 Consequential amendments of the *Environmental Protection Act 1994*

Schedule 1 makes minor technical, administrative and consequential corrections.

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