

Queensland



**ENVIRONMENTAL  
PROTECTION LEGISLATION  
AMENDMENT ACT 2003**

**Act No. 95 of 2003**



# Queensland



## ENVIRONMENTAL PROTECTION LEGISLATION AMENDMENT ACT 2003

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Queensland



**Environmental Protection Legislation  
Amendment Act 2003**

**Act No. 95 of 2003**

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

*[Assented to 3 December 2003]*

**The Parliament of Queensland enacts—**

## **PART 1—PRELIMINARY**

### **1 Short title**

This Act may be cited as the *Environmental Protection Legislation Amendment Act 2003*.

### **2 Commencement**

(1) Sections 42 to 44 commence on assent.

(2) The remaining provisions of this Act commence on a day to be fixed by proclamation.

## **PART 2—AMENDMENT OF ENVIRONMENTAL PROTECTION ACT 1994**

### **3 Act amended in pt 2 and schedule**

This part and the schedule amend the *Environmental Protection Act 1994*.

### **4 Amendment of ch 4 (Development approvals and environmental authorities other than for mining activities)**

Chapter 4, from heading for chapter to heading for part 3, division 2—  
*omit, insert—*



## **‘CHAPTER 4—DEVELOPMENT APPROVALS AND REGISTRATION (OTHER THAN FOR MINING OR PETROLEUM ACTIVITIES)**

### **‘PART 1—ASSESSING DEVELOPMENT APPLICATIONS**

#### **‘73 Application of pt 1**

‘This part applies if the administering authority is the assessment manager or a referral agency for a development application for a chapter 4 activity.

#### **‘73A Assessing development applications**

‘(1) In assessing the application, the administering authority—

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

‘(2) This section does not limit the Integrated Planning Act, section 3.3.15<sup>1</sup> or chapter 3, part 5, division 2<sup>2</sup> of that Act.

‘(3) If the application is an application for an increase in the scale or intensity of a chapter 4 activity, the administering authority must assess the application having regard to—

- (a) the proposed activity; and
- (b) the existing activity; and
- (c) the total likely or potential environmental harm the proposed activity and the existing activity, may cause.

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1 Integrated Planning Act, section 3.3.15 (Referral agency assesses application)

2 Integrated Planning Act, chapter 3 (Integrated development assessment system (IDAS)), part 5 (Decision stage), division 2 (Assessment process)

*Example of how application is assessed—*

If a chapter 4 activity is carried out on premises and a development application is made because of a proposed intensification of the activity, the application is assessed on the basis of the activity, including the intensification.

### **‘73B Conditions of development approval that may and must be imposed**

‘(1) Subject to the Integrated Planning Act, section 3.5.30,<sup>3</sup> the administering authority may impose the conditions on the development approval it considers are necessary or desirable.

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

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

- (a) require all or any of the following—
  - (i) stated plant or equipment to be installed and operated in a stated way within a stated period;
  - (ii) stated measures be taken to minimise the likelihood of environmental harm being caused;
  - (iii) carrying out and reporting on a stated monitoring program;
  - (iv) the preparation and carrying out of an environmental management program;
  - (v) the giving of relevant information reasonably required by the administering authority for the administration or enforcement of this Act;
  - (vi) the carrying out or reporting about stated rehabilitation or remediation work relating to the chapter 4 activity the subject of the development approval; or
- (b) prohibit the changing, replacing or operating of any plant or equipment associated with the activity if the change, replacement or operation increases, or is likely to substantially increase, the risk of environmental harm; or

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3 Integrated Planning Act, section 3.5.30 (Conditions must be relevant or reasonable)

- (c) include a condition under section 364<sup>4</sup> requiring the giving of financial assurance.

‘(4) A condition may be imposed even if it imposes an obligation that continues to apply after the activity stops.

*Example for subsection (4)—*

A condition may—

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

### **‘73C Adding, changing or cancelling a development condition**

‘(1) The administering authority may add, change or cancel a development condition of a development approval if it considers the addition, change or cancellation is necessary or desirable because of—

- (a) a contravention of this Act or an environmental offence committed by the registered operator; or
- (b) the development approval or registration certificate was issued because of a materially false or misleading representation or declaration, made either orally or in writing; or
- (c) the development approval was issued on the basis of a miscalculation of—
  - (i) the quantity or quality of contaminant authorised to be released into the environment; or
  - (ii) the effects of the release of a quantity or quality of contaminant authorised to be released into the environment; or
- (d) a change in the way in which, or the place where, contaminants are, or are likely to be, released into the environment; or
- (e) the approval of an environmental protection policy or the approval of the amendment of an environmental protection policy; or
- (f) an environmental report; or

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4 Section 364 (When financial assurance may be required)

- (g) a report made by or for, or approved by, a recognised entity if the report—
  - (i) is relevant to the development approval or an activity carried out under it; and
  - (ii) if the administering authority is not the chief executive—has been accepted by the chief executive; or
- (h) another circumstance prescribed under a regulation.

‘(2) Also, the administering authority may add, change or cancel a development condition of a development approval about financial assurance, monitoring or reporting if it considers the addition, change or cancellation is necessary or desirable because a person has applied to be the registered operator for the development approval.

‘(3) The process stated in the Integrated Planning Act, section 3.5.33A for changing or cancelling a condition applies for adding, changing or cancelling a condition under this section.

‘(4) If the administering authority adds, changes or cancels a condition, it must—

- (a) within 10 business days, record the particulars of the addition, change or cancellation in the appropriate register; and
- (b) if the condition relates to a mobile and temporary environmentally relevant activity—give notice of the addition, change or cancellation to the registered operator for the development approval.

‘(5) A notice stating the administering authority has decided to add, change or cancel a condition is taken to be a notice to which the Integrated Planning Act, section 4.1.31(1)(b)<sup>5</sup> applies.

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5 Integrated Planning Act 1997, section 4.1.31 (Appeals for matters arising after approval given (no co-respondents))

## **‘PART 2—REGISTRATION**

### **‘73D Application for registration to carry out chapter 4 activity**

‘(1) A person may apply to be a registered operator to carry out 1 or more chapter 4 activities.

‘(2) The application must—

- (a) be made to the administering authority in the approved form; and
- (b) be accompanied by the fee prescribed under a regulation.

‘(3) The applicant may withdraw the application at any time before the application is decided.

### **‘73E Grounds for refusing application for registration**

‘The administering authority may refuse the application if the authority is satisfied—

- (a) the applicant is not a suitable person to be a registered operator having regard to the applicant’s environmental record; or
- (b) for an applicant that is not a corporation, a disqualifying event has happened in relation to the applicant or another person of whom the applicant is a partner; or
- (c) for an applicant that is a corporation, a disqualifying event has happened in relation to—
  - (i) any of the corporation’s executive officers; or
  - (ii) another corporation of which any of the corporation’s executive officers are, or have been, an executive officer.

### **‘73F Registration certificates**

‘(1) If the administering authority decides to grant the application, the authority must give the applicant a certificate (a “**registration certificate**”) for the activities applied for within—

- (a) if the authority requests a suitability report about the applicant—20 business days after receiving the application; or

(b) if the authority does not request a suitability report about the applicant—10 business days after receiving the application.

‘(2) However, if the administering authority is satisfied the activities will not be carried out as a single integrated operation, 2 or more registration certificates may be granted instead of a single registration certificate.

‘(3) For this section, activities are carried out as a single integrated operation if—

- (a) the activities are carried out under the day to day management of a single responsible person, for example, a site or operations manager; and
- (b) the activities are operationally interrelated; and
- (c) the integrated operation of the activities leads to a lower risk of environmental harm being caused by the activities; and
- (d) the activities are, or will be, carried out at 2 or more places at or about the same time, and the places where they are carried out are separated by distances short enough to make feasible the integrated day to day management of the activities.

‘(4) If—

- (a) under subsection (2), the administering authority grants 2 or more registration certificates; and
- (b) the fee paid by the applicant under section 73D(2)(b) was for a single registration certificate;

the applicant must pay the fees for the additional registration certificates.

‘(5) If the authority decides to refuse the application, the authority must give the applicant an information notice about the decision within—

- (a) if the authority requests a suitability report for the application—20 business days of receiving the application; or
- (b) if the authority does not request a suitability report for the application—10 business days of receiving the application.

‘(6) A registration certificate authorises the registered operator to carry out the activities stated in the certificate at the place or places stated in the certificate.

‘(7) If the authority does not act under subsection (1), (2) or (5)—

- (a) the applicant is taken to have been granted a registration certificate for the activities applied for; and
- (b) the authority must issue the registration certificate as soon as practicable.

### **‘73G When registration certificate takes effect**

‘(1) Subject to subsection (2), each registration certificate has effect from—

- (a) if the certificate states a day the certificate takes effect—the day stated in the certificate; or
- (b) if the certificate does not state a day the certificate takes effect—the day the certificate is granted; or
- (c) if the certificate is taken to have been granted under section 73F(7)—21 business days after the administering authority received the application.

‘(2) If section 73F(4) applies to an application, none of the registration certificates granted take effect until the fees for the additional registration certificates have been paid.

## **‘PART 3—AMENDING REGISTRATION**

### **‘73H Amending a registration certificate**

‘(1) The administering authority may amend a registration certificate at any time to correct a clerical or formal error if—

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

‘(2) The administering authority may amend a registration certificate at any time—

- (a) if the operator has agreed in writing to the amendment; or

- (b) to ensure the detail on the certificate is consistent with any code of environmental compliance applying to the activity.

‘(3) If a registered operator applies for a registration certificate for a new activity and the administering authority is satisfied registration should be granted, the administering authority may, instead of issuing a registration certificate for the activity, amend an existing registration certificate to include the new activity.

‘(4) If the administering authority amends a registration certificate, it must, within 10 business days—

- (a) record particulars of the amendment in the appropriate register; and
- (b) give the operator a copy of the amended registration certificate.

## **‘PART 4—CANCELLING OR SUSPENDING REGISTRATION**

### **‘73I Cancelling or suspending a registration certificate**

‘The administering authority may cancel or suspend a registration certificate if—

- (a) the certificate was issued because of a materially false or misleading representation or declaration, made either orally or in writing; or
- (b) the registered operator is, after the issue of the registration certificate, convicted of an environmental offence; or
- (c) the operator has been given an annual notice and the notice has not been complied with.

### **‘73J Notice of proposed action**

‘(1) If the administering authority proposes to cancel or suspend a registration certificate, the administering authority must give the registered operator a written notice stating—



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

‘(2) The stated period must end at least 20 business days after the operator is given the proposed action notice.

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

*Example for subsection (3)—*

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

### ‘73K Considering representations

‘The administering authority must consider any written representation made within the period stated in the notice given under section 73J.

### ‘73L Decision on proposed action

‘(1) If, after complying with section 73K, the administering authority still believes a ground exists to take the proposed action, it may—

- (a) if the proposed action was to suspend the registration certificate for a stated period—suspend the registration certificate for no longer than the stated period; or
- (b) if the proposed action was to cancel the registration certificate—
  - (i) cancel the registration certificate; or
  - (ii) suspend it for a fixed period.

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

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

### **‘73M Notice of proposed action decision**

‘(1) The administering authority must, within 10 business days after the proposed action decision is made, give the registered operator an information notice about the decision.

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

- (a) the day the notice is given to the registered operator;
- (b) a later day of effect stated in the notice.

‘(3) However, if the decision was to cancel or suspend the registration certificate because of the conviction of the operator for an offence, the cancellation or suspension—

- (a) does not take effect until—
  - (i) the period to appeal against the conviction ends; and
  - (ii) if the appeal is made against the conviction—the appeal is finally decided or is otherwise ended; and
- (b) has no effect if the conviction is quashed on appeal.

### **‘73N Steps for cancelling or suspending a registration certificate**

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

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

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

‘(3) If the action is suspension of the registration certificate—

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

## **‘PART 5—SURRENDERING REGISTRATION**

### **‘730 Surrendering a registration certificate**

‘(1) A registered operator may apply to surrender the operator’s registration certificate.

‘(2) The application must be—

- (a) made in the approved form; and
- (b) given to the administering authority; and
- (c) accompanied by—
  - (i) an audit statement advising the extent to which activities carried out under the development approval or the relevant code of environmental compliance have complied with the development conditions of the approval or the standard environmental conditions of the code; and
  - (ii) the fee prescribed under a regulation.

‘(3) The administering authority must consider the application and, within 20 business days after the application is received by the administering authority, either approve or refuse the surrender.

‘(4) The administering authority must approve the surrender if the administering authority is satisfied the operator has not started to carry out any activity for which the certificate was granted.

‘(5) The administering authority must not approve the surrender unless it is satisfied the land on which the activities have been carried out has been, or will be, satisfactorily rehabilitated or suitably managed.

‘(6) In making a decision under subsection (3), 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 audit statement mentioned in subsection (2)(c)(i);
  - (iii) whether the standard environmental conditions of the code of environmental compliance for the activity, or the

development conditions of the development approval, have been complied with;

- (iv) any environmental management program for the land;
- (v) whether or not the land has been removed from the environmental management register or the land has a site management plan approved for it;
- (vi) whether or not any financial assurance given for the activity should be returned, reduced or retained;
- (vii) another matter prescribed under an environmental protection policy or a regulation.

#### **‘73P Steps for surrendering a registration certificate**

‘(1) If the administering authority approves the surrender, the administering authority must, within 10 business days—

- (a) record particulars of the surrender in the appropriate register; and
- (b) give the registered operator notice of the approval.

‘(2) If the administering authority decides to refuse the surrender, the administering authority must, within 10 business days of deciding to refuse the surrender, give the operator an information notice about the decision to refuse.

## **‘PART 6—MISCELLANEOUS**

#### **‘73Q Notice of disposal by registered operator**

‘(1) This section applies if a registered operator proposes to dispose of the operator’s business to someone else (the “**proposed buyer**”).

‘(2) Before agreeing to dispose of the business, the operator must give the proposed buyer written notice that the proposed buyer must apply for a new registration certificate.

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

### **‘73R Additional consequences of not giving notice**

‘(1) This section applies if section 73Q applies and the registered operator does not comply with section 73Q(2).

‘(2) The proposed buyer may, by written notice, rescind the agreement before the completion of the agreement or possession under the agreement, whichever is the earlier.

‘(3) On the rescission of the agreement—

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

‘(4) This section has effect despite any other Act or anything to the contrary in the agreement.

### **‘73S Effect of self-assessable development becoming assessable development**

‘(1) This section applies if a chapter 4 activity that was self-assessable development becomes assessable development because of the repeal of a code of environmental compliance.

‘(2) From the day the code is repealed, the registration certificate for the activity is taken to also be a development approval for the activity subject to the conditions stated in the repealed code.<sup>6</sup>

### **‘73T Offences under s 427 do not apply in certain circumstances**

‘(1) This section applies if, because of a change in the law an activity that is being carried out and is not a chapter 4 activity becomes a chapter 4 activity.

‘(2) Section 427 does not apply to the person carrying out the activity until 4 months after the day the activity becomes a chapter 4 activity.

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<sup>6</sup> However, see section 73C (Adding, changing or cancelling a development condition)

‘(3) Also, section 427 does not apply to the person carrying out the activity after the 4 months mentioned in subsection (2) end if, within the 4 months—

- (a) if the activity is a chapter 4 activity that is subject to a code of environmental compliance—the person applied to be a registered operator for the activity; or
- (b) if the activity is a chapter 4 activity that is not subject to a code of environmental compliance—
  - (i) the person applied to be a registered operator for the activity; and
  - (ii) a development application was made for carrying out the activity.

‘(4) Subsection (3) continues to have effect in relation to the person until—

- (a) the application under subsection (3)(a) has been decided; or
- (b) both applications under subsection (3)(b) have been decided; or
- (c) the application lapses.

‘(5) If a development application mentioned in subsection (3) is made, despite the Integrated Planning Act, the applicant must respond to an information request about the application within 3 months after the day the request is made.

‘(6) If the applicant does not respond to an information request about the application within 3 months after the day the request is made, the application lapses.

## **‘CHAPTER 4A—ENVIRONMENTAL AUTHORITIES FOR PETROLEUM ACTIVITIES**

### **‘PART 1—PRELIMINARY**

#### **‘73U Application of ch 4A**

‘This chapter applies only to environmental authorities for petroleum activities.<sup>7</sup>

#### **‘74 Types of environmental authority under ch 4A**

‘The following are the types of environmental authority under this chapter—

- (a) a licence for a level 1 environmentally relevant activity (a **“licence”**);
- (b) a provisional environmental authority (a **“provisional licence”**) for a level 1 environmentally relevant activity;
- (c) an approval for a level 2 environmentally relevant activity (a **“level 2 approval”**);
- (d) a constituent part of an integrated authority, if the constituent part is an environmental authority mentioned in paragraphs (a) to (c).<sup>8</sup>

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7 See also chapter 6 (General provisions about environmental authorities and registration certificates).

8 See section 315A (Constituent parts continue to be environmental authorities).

## **‘PART 2—ENVIRONMENTAL AUTHORITY APPLICATIONS**

### *‘Division 1—Obtaining licence’.*

#### **5 Amendment of s 87 (Operation of sdiv 1)**

Section 87, ‘(without development approval)’—  
*omit.*

#### **6 Replacement of s 106 (Term of environmental authority)**

Section 106—  
*omit, insert—*

#### **‘106 Term of environmental authority**

**‘(1)** A licence continues in force unless it is—

- (a) surrendered under part 4, division 3;<sup>9</sup> or
- (b) suspended under part 5;<sup>10</sup> or
- (c) cancelled under part 5.

**‘(2)** A level 2 approval continues in force for the period stated in it unless it is earlier—

- (a) surrendered under part 4, division 3; or
- (b) suspended under part 5; or
- (c) cancelled under part 5.

#### **7 Omission of ch 4, pt 4 (Conversion of licence to level 1 approval)**

Chapter 4, part 4 (as it was before the commencement of section 4)—  
*omit.*

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<sup>9</sup> Part 4 (Dealings with environmental authorities), division 3 (Surrenders)

<sup>10</sup> Part 5 (Amendment, cancellation or suspension of environmental authorities by administering authority)



**8 Amendment of s 119 (Public notice may be required for amendment of licence (without development approval))**

Section 119, '(without development approval)'—

*omit.*

**9 Amendment of s 120 (Public notice process)**

Section 120(1), '(without development approval)'—

*omit.*

**10 Amendment of s 128J (When surrender application required)**

Section 128J(2) and (3)—

*omit.*

**11 Amendment of s 130 (Other amendments)**

(1) Section 130(2)(h)—

*omit.*

(2) Section 130(3), definition "recognised entity"—

*relocate* to schedule 3.

(3) Section 130(3)—

*omit.*

**12 Amendment of s 131 (Conditions)**

Section 131(2) and (3)(b)—

*omit.*

**13 Amendment of s 135 (Decision on proposed action)**

Section 135(1)(c)(iii) and (iv)—

*omit.*

**14 Omission of s 145 (Death of environmental authority holder)**

Section 145—

*omit.*

**15 Omission of ch 5, pt 13, div 5**

Chapter 5, part 13, division 5—

*omit.*

**16 Amendment of ch 6, hdg (General provisions about environmental authorities)**

Chapter 6, heading after ‘AUTHORITIES’—

*insert—*

**‘AND REGISTRATION CERTIFICATES’.**

**17 Replacement of s 316 (Annual fee and return)**

Section 316—

*omit, insert—*

**‘316 Annual fee and return**

**‘(1)** This section applies for—

- (a) a registration certificate for which an annual fee is prescribed under a regulation; or
- (b) an environmental authority for a mining or petroleum activity for which an annual fee is prescribed under a regulation.

**‘(2)** At least 20 business days before each anniversary day for the registration certificate or environmental authority, the administering authority must give the registered operator or environmental authority holder a written notice (an **“annual notice”**).

**‘(3)** An annual notice must state—

- (a) whether or not the administering authority requires the operator or holder to lodge an annual return in the approved form; and

- (b) that the operator or holder must pay the authority the appropriate annual fee, other than in a circumstance prescribed under a regulation for this paragraph; and
- (c) that if the operator or holder does not comply with the notice, the registration certificate or environmental authority may be cancelled or suspended.<sup>11</sup>

‘(4) The operator or holder must comply with the notice.

‘(5) If the operator or holder does not pay the annual fee within the time stated for payment in the annual notice, the administering authority may recover it as a debt.’

## **18 Omission of s 318 (Effect of Integrated Planning Act, s 6.1.44)**

Section 318—

*omit.*

## **19 Replacement of ss 318A and 318B**

Sections 318A and 318B—

*omit, insert—*

### **‘318A Changing anniversary day**

‘(1) Subsection (2) applies for—

- (a) the registered operator for a registration certificate for which an annual fee is prescribed under a regulation; or
- (b) the holder of an environmental authority for a mining or petroleum activity for which an annual fee is prescribed under a regulation.

‘(2) The operator or holder may apply to the administering authority to change the anniversary day for the registration certificate or environmental authority to another day of each year (the “**new day**”).<sup>12</sup>

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<sup>11</sup> See sections 73I (Cancelling or suspending a registration certificate), 131 (Conditions) and 293 (Conditions).

<sup>12</sup> See however, section 618 (Section 318A does not apply for transitional authority).

‘(3) The application must be in the approved form and accompanied by the fee prescribed under a regulation.

‘(4) The administering authority must, within 20 business days after the application is made, decide whether or not to change the anniversary day to the new day.

‘(5) The administering authority must, within 10 business days after the decision is made, give the operator or holder—

- (a) if the decision is to change the day—written notice of the decision; or
- (b) if the decision is not to change the day—an information notice about the decision.

‘(6) A decision under subsection (4) to change the anniversary day takes effect on the later of the following days—

- (a) the day the operator or holder is given notice of the decision;
- (b) a later day of effect stated in the notice.

‘(7) The administering authority may, if the operator or the holder agrees in writing, change the anniversary day for the registration certificate or environmental authority to another day of each year (also the “**new day**”).

‘(8) However, despite subsections (1) to (7), if the environmental authority is a constituent part of an integrated authority, the anniversary day may be changed only if the anniversary day for all constituent parts of the integrated authority is changed to the new day.

### ‘318B Special provisions for changeover in anniversary day

‘(1) If the anniversary day for a registration certificate or an environmental authority is changed under section 318A—

- (a) the period from its last anniversary day before the change to its first anniversary day after the change (an “**interim year**”) is taken to be a year for the registration certificate or environmental authority; and
- (b) the administering authority’s obligation under section 316(2) to give an annual notice does not apply for the first anniversary day after the change.

‘(2) A different form may be approved under section 316(3)(a) for an annual return for an interim year than for other years.

**‘318C Death of environmental authority holder or registered operator**

‘If the holder of an environmental authority or a registered operator dies, the personal representative of the holder or operator’s estate is taken to be the holder of the environmental authority or the registered operator.’.

**20 Amendment of s 320 (Duty to notify environmental harm)**

Section 320(2)—

*insert—*

‘(ea) a standard environmental condition of a code of environmental compliance for a chapter 4 activity; or’.

**21 Amendment of s 326 (Administering authority to consider and act on environmental reports)**

Section 326(2)(c)—

*omit, insert—*

‘(c) if the recipient is a registered operator for a development approval—under section 73C, add, change or cancel a development condition of the development approval;’.

**22 Amendment of s 332 (Administering authority may require draft program)**

Section 332(2)—

*insert—*

‘(ca) that a standard environmental condition of a code of environmental compliance for a chapter 4 activity is, or has been, contravened by the person or public authority; or’.

**23 Amendment of s 346 (Effect of compliance with program)**

(1) Section 346(2)(a) and (3)(a), ‘, other than a level 1 approval,’—

*omit.*

**(2)** Section 346(2)—

*insert—*

‘(ba) a standard environmental condition of a code of environmental compliance for a chapter 4 activity; or’.

**(3)** Section 346(3)—

*insert—*

‘(aa) a standard environmental condition of a code of environmental compliance for a chapter 4 activity; or

(ab) a development condition of a development approval; or’.

## **24 Amendment of s 358 (When order may be issued)**

Section 358(d)—

*insert—*

‘(iva) a standard environmental condition of a code of environmental compliance for a chapter 4 activity; or’.

## **25 Amendment of s 364 (When financial assurance may be required)**

**(1)** Section 364—

*insert—*

‘**(1A)** Also, the administering authority may, as a development condition for a level 1, chapter 4 activity, require the person who is, or has applied to be, the registered operator for the activity to give the administering authority financial assurance as security for—

- (a) compliance with the development approval and any development conditions; and
- (b) costs or expenses, or likely costs or expenses, mentioned in section 367.’.

**(2)** Section 364(2)—

*insert—*

‘(c) for a development approval for a level 1, chapter 4 activity—

- (i) the degree of risk of environmental harm being caused, or that might reasonably be expected to be caused, by the activity carried out, or to be carried out, under the approval; and
- (ii) the likelihood of action being required to rehabilitate or restore and protect the environment because of environmental harm being caused by the activity; and
- (iii) the environmental record of the registered operator.’.

## **26 Amendment of s 367 (Claims on financial assurances)**

(1) Section 367(1)(a), from ‘authority’—

*omit, insert—*

‘authority, an environmental management program approval or a development approval for which financial assurance has been given; or’.

(2) Section 367(1)(c)—

*omit, insert—*

‘(c) secure compliance with an environmental authority, environmental management program, site management plan, development approval or any conditions of the authority, program, plan or approval, for which financial assurance has been given.’.

(3) Section 367(3), ‘authority or approval holder’—

*omit, insert—*

‘person who gave the financial assurance’.

(4) Section 367(7), ‘holder’—

*omit, insert—*

‘person’.

(5) Section 367(8), definition, “holder”—

*omit.*

## **27 Replacement of ss 426 and 427**

Sections 426 and 427—

*omit, insert—*

**‘426 Environmental authority required for mining or petroleum activity**

‘(1) A person must not carry out a mining or petroleum activity that is a level 1 environmentally relevant activity unless the person holds, or is acting under—

- (a) if the activity is a mining activity—a non-standard environmental authority (mining activities); or
- (b) if the activity is a petroleum activity—a licence.

Maximum penalty—400 penalty units.

‘(2) A person must not carry out a mining or petroleum activity that is a level 2 environmentally relevant activity unless the person holds, or is acting under—

- (a) if the activity is a mining activity—a standard environmental authority (mining activities); or
- (b) if the activity is a petroleum activity—a level 2 approval.

Maximum penalty—165 penalty units.

‘(3) This section is subject to section 140.<sup>13</sup>

**‘427 Only registered operators may carry out chapter 4 activities**

‘(1) A person must not carry out a level 1 chapter 4 activity, unless the person is a registered operator for the activity or is acting under a registration certificate for the activity.

Maximum penalty—400 penalty units.

‘(2) A person must not carry out a level 2 chapter 4 activity, unless the person is a registered operator for the activity or is acting under a registration certificate for the activity.

Maximum penalty—165 penalty units.

‘(3) This section is subject to section 73T.’

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13 Section 140 (Environmental authorities for new environmentally relevant activities)



## **28 Amendment of s 429 (Special provisions for interstate transporters of controlled waste)**

Section 429(1), all words to ‘waste if —’—

*omit, insert—*

‘(1) If a person is carrying out the interstate transportation of controlled waste, section 427 does not apply to the person, and the person does not require a development approval for carrying out the activity, if—’.

## **29 Insertion of ss 435A and 435B**

Chapter 8, part 2, after section 435—

*insert—*

### **‘435A Offence to contravene standard environmental conditions**

‘(1) A person carrying out a chapter 4 activity, that is subject to a code of environmental compliance, must not wilfully contravene a standard environmental condition of the code.

Maximum penalty—2 000 penalty units or 2 years imprisonment.

‘(2) A person carrying out a chapter 4 activity, that is subject to a code of environmental compliance, must not contravene a standard environmental condition of the code.

Maximum penalty—1 665 penalty units.

‘(3) In a proceeding for an offence against subsection (1), if the court is not satisfied the defendant is guilty of the offence charged but is satisfied the defendant is guilty of an offence against subsection (2), the court may find the defendant guilty of the offence against subsection (2).

### **‘435B Registered operator responsible for ensuring conditions complied with**

‘(1) Each registered operator must ensure everyone acting under the operator’s registration certificate complies with—

- (a) the development conditions of the development approval for the activity; or
- (b) the standard environmental conditions of the code of environmental compliance for the activity.

‘(2) If a person acting under the registration certificate commits an offence against section 435 or 435A, the registered operator also commits an offence, namely, the offence of failing to ensure the person complies with the conditions.

Maximum penalty—the penalty under section 435(1) or (2) or section 435A(1) or (2) for the contravention of the conditions.

‘(3) Evidence that the person has been convicted of an offence against section 435 or 435A while acting under the registration certificate is evidence that the registered operator committed the offence of failing to ensure the person complies with the conditions.

‘(4) However, it is a defence for the registered operator to prove—

- (a) the registered operator issued appropriate instructions and used all reasonable precautions to ensure compliance with the conditions; and
- (b) the offence was committed without the operator’s knowledge; and
- (c) the operator could not by the exercise of reasonable diligence have stopped the commission of the offence.’.

### **30 Amendment of s 436 (Unlawful environmental harm)**

Section 436(1)—

*insert—*

‘(ea) a standard environmental condition of a code of environmental compliance for a chapter 4 activity; or’.

### **31 Insertion of new s 444A**

Chapter 8, part 4, after section 444—

*insert—*

#### **‘444A Offence not to notify chapter 4 activity has stopped**

‘If a registered operator in relation to a chapter 4 activity stops carrying out the activity, the operator must, within 20 business days, give the administering authority a written notice advising the activity has stopped.

Maximum penalty—50 penalty units.’.

### **32 Amendment of s 452 (Entry of place—general)**

Section 452(1)(c)—

*omit, insert—*

- ‘(c) it is a place to which an environmental authority relates and the entry is made when—
  - (i) the mining or petroleum activity to which the authority relates is being carried out; or
  - (ii) the place is open for conduct of business; or
  - (iii) the place is otherwise open for entry; or
- (ca) it is a place to which a registration certificate, a development approval subject to a development condition or a code of environmental compliance relates and the entry is made when—
  - (i) the chapter 4 activity to which the certificate, approval or code relates is being carried out; or
  - (ii) the place is open for conduct of business; or
  - (iii) the place is otherwise open for entry; or’.

### **33 Amendment of s 458 (Order to enter land to conduct investigation or conduct work)**

(1) Section 458(1)(a)(i), after ‘environmental authority,’—

*insert—*

‘registration certificate,’.

(2) Section 458(1)(a)(iii)—

*omit, insert—*

- ‘(iii) secure compliance with—
  - (A) an environmental authority, environmental management program, site management plan or any conditions of the authority, program or plan; or
  - (B) development conditions of a development approval; or
  - (C) standard environmental conditions of a code of environmental compliance for a chapter 4 activity; or’.

(3) Section 458(2)(c)—

*insert—*

‘(iii) the registered operator.’.

### **34 Amendment of s 490 (Evidentiary provisions)**

(1) Section 490(5)(a), (b) and (c), ‘requirement’—

*omit, insert—*

‘requirement, registration certificate’.

(2) Section 490(5)(d), ‘authority’—

*omit, insert—*

‘authority or registration certificate’.

### **35 Amendment of s 499 (Proof of authority)**

Section 499, ‘authority’—

*omit, insert—*

‘authority or registration certificate’.

### **36 Amendment of s 520 (Dissatisfied person)**

(1) Section 520(1)—

*insert—*

‘(ba)if the decision is about a registration certificate—

(i) the applicant for the certificate; or

(ii) the holder of the certificate; or’.

(2) Section 520(1)—

*insert—*

‘(t) if the decision is about issuing replacement documents under section 621—the person who was the holder of the environmental authority.’.

**37 Amendment of s 538 (Appeals may be heard with planning appeals)**

(1) Section 538(1)(a), from ‘grant’—

*omit, insert—*

‘grant a registration certificate; and’.

(2) Section 538(1)(b), from ‘the subject of’—

*omit, insert—*

‘to which the certificate or the application for the certificate relates.’.

**38 Amendment of s 540 (Required registers)**

Section 540(1)—

*insert—*

‘(ca) in relation to chapter 4, the following—

- (i) registration certificates;
- (ii) surrenders of registration certificates;
- (iii) reports the administering authority accepts under section 73C(1)(g)(ii);’.

**39 Insertion of new s 549A**

After section 549—

*insert—*

**‘549A When standard environmental conditions must be complied with**

‘(1) This section applies if the Minister, under section 549(2), approves standard environmental conditions for carrying out a chapter 4 activity.

‘(2) If there is a difference between a development condition applying for the activity before the approval and a standard environmental condition for the activity, the standard environmental condition prevails to the extent of the difference.

‘(3) However, for a person who was, immediately before the approval under section 549(2) was given, lawfully carrying out the activity,

section 435A does not apply until 1 year after the standard environmental conditions for the activity were approved.<sup>14</sup>.

#### **40 Insertion of new s 550A**

Chapter 12, part 1, after section 550—

*insert—*

##### **‘550A Effect of changes to standard environmental conditions (chapter 4 activities)**

‘(1) This section applies if a change is approved to a standard environmental condition applying to a chapter 4 activity for which there is a code of environmental compliance.

‘(2) The changed conditions do not apply until 1 year after the day the change is approved.<sup>15</sup>’.

#### **41 Amendment of s 559 (Investigation of applicant suitability or disqualifying events)**

Section 559(1)—

*insert—*

‘(aa) the person is a suitable person to be, or continue to be, a registered operator; or’.

#### **42 Insertion of new s 586A**

After section 586—

*insert—*

##### **‘586A Existing authority becomes an environmental authority (mining activities)**

‘(1) This section applies if, on 1 January 2001—

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14 Under section 333 (Voluntary submission of draft program), a registered operator could apply for an environmental management program within 1 year.

15 Under section 333 (Voluntary submission of draft program), a registered operator could apply for an environmental management program within 1 year.

- (a) an environmental authority had been issued; and
- (b) the authority was for, or included, a mining activity; and
- (c) the authority could not take effect until a mining tenement was granted.

‘(2) From the day the tenement was or is granted, the authority is taken to be an environmental authority (mining activities).

‘(3) Chapter 5<sup>16</sup> applies to the authority, subject to division 4.’

#### **43 Amendment of s 587 (Conditions of environmental authority)**

Section 587(1), ‘after ‘586’—

*insert—*

‘or 586A’.

#### **44 Amendment of s 592 (Meaning of “transitional authority” for div 4)**

Section 592(1)(a), after ‘586’—

*insert—*

‘or 586A’.

#### **45 Insertion of new ch 13, pt 5**

After section 618—

*insert—*

## **‘PART 5—TRANSITIONAL PROVISIONS FOR ENVIRONMENTAL PROTECTION LEGISLATION AMENDMENT ACT 2003**

### **‘619 Continuing effect of particular environmental authorities**

**‘(1)** Subsection (2) applies for an environmental authority for a chapter 4 activity, if—

- (a) the authority is in force immediately before the commencement of this section; and
- (b) there is no development approval for the activity.

**‘(2)** From the commencement—

- (a) the authority has effect as if it were a registration certificate for the activity; and
- (b) the authority has effect as if the holder of the authority were the registered operator for the activity; and
- (c) the authority has effect as if it were—
  - (i) if the activity would, after the commencement, be a mobile and temporary activity—a development approval for a material change of use under the Integrated Planning Act, schedule 8, part 1, table 5, item 3; or
  - (ii) in any other case—a development approval for a material change of use under the Integrated Planning Act, schedule 8, part 1, table 2, item 1; and
- (d) any condition of the authority, has effect as if it were a development condition of the development approval; and
- (e) if the authority is a provisional licence, or is for a level 2, chapter 4 activity and was granted for a stated period—the authority has effect only until the end of the period for which the authority would have had effect if the *Environmental Protection Legislation Amendment Act 2003* had not been enacted.

**‘(3)** Subsection (4) applies for an environmental authority for a chapter 4 activity, if—

- (a) the authority is in force immediately before the commencement of this section; and



(b) there is a development approval for the activity.

‘(4) From the commencement—

- (a) the development approval continues to have effect; and
- (b) the authority has effect as if it were a registration certificate for the activity; and
- (c) the authority has effect as if the holder of the authority were the registered operator for the activity; and
- (d) any condition of the authority, has effect as if it were a development condition of the development approval.

#### **‘620 Additional ground for changing or cancelling development conditions**

‘(1) This section applies to a condition of an environmental authority given continuing effect under section 619(2)(d) or (4)(d).

‘(2) The administering authority for the environmental authority may change or cancel the condition if—

- (a) the change or cancellation is necessary because the condition is no longer appropriate as a development condition of a development approval for the activity; or
- (b) the condition needs to be changed or cancelled so that the administering authority, in applying section 619, can accurately and reliably identify the conditions of the development approval; or
- (c) the conditions are otherwise unclear, uncertain or contradictory.

‘(3) However, the administering must not act under subsection (2) if the change to or cancellation of the condition adversely affects the interests of the registered operator for the activity.

‘(4) If the condition is changed it must in substance reflect the intent of the condition as included in the environmental authority as it existed before section 619 commenced.

‘(5) If the administering authority changes or cancels a condition, it must within 10 business days—

- (a) record the particulars of the change or cancellation in the appropriate register; and

- (b) give the registered operator—
  - (i) a copy of the development conditions as applying after the change or cancellation; and
  - (ii) a registration certificate.

### **‘621 Administering authority may issue replacement documents**

‘(1) The administering authority may, for an activity being carried out under an environmental authority mentioned in section 619(1), give to the person carrying out the activity—

- (a) if the activity was carried out at 1 location—a development approval for the location; or
- (b) if the activity was carried out at more than 1 location and is not a mobile and temporary environmentally relevant activity—a development approval for each location; or
- (c) if the activity is a mobile and temporary environmentally relevant activity—a development approval for a mobile and temporary environmentally relevant activity.

‘(2) If the person carrying out the activity does not have a registration certificate for the activity, the administering authority may also give the person a registration certificate for the activity.

‘(3) The development approval must contain the same details about the activity and conditions for carrying out the activity as were contained in the authority.

‘(4) If the administering authority acts under subsection (1) or subsections (1) and (2), the administering authority must give the person carrying out the activity an information notice about the administering authority’s decision to give the approval or approval and certificate.

‘(5) The approval or approval and certificate have effect and the environmental authority is cancelled—

- (a) if there is no appeal against the administering authority’s decision under subsection (4)—from the day after the appeal period expires; or
- (b) if there is an appeal against the administering authority’s decision under subsection (4)—from the day after the appeal is finally decided or is otherwise ended.

### **‘622 Effect of commencement on particular integrated authorities**

‘(1) Subsection (2) applies to an environmental authority mentioned in section 619 if, on the commencement of this section—

- (a) the environmental authority is a constituent part of an integrated authority; and
- (b) another constituent part of the integrated authority is an environmental authority for a mining or petroleum activity.

‘(2) On the commencement, the environmental authority mentioned in subsection (1)(a)—

- (a) other than for section 316(2) to (4), ceases to be a constituent part of the integrated authority; and
- (b) has the same anniversary day as the integrated authority.<sup>17</sup>

‘(3) The administering authority must record particulars of the cessation in the appropriate register.

‘(4) For section 316(2) to (4), the environmental authority is taken to still be a constituent part of the integrated authority while the same person is the holder of all authorities forming constituent parts of the integrated authority.

‘(5) Subsection (6) applies if, on the commencement of this section—

- (a) an environmental authority mentioned in section 619 is a constituent part of an integrated authority; and
- (b) another constituent part of the integrated authority is also an environmental authority mentioned in section 619.

‘(6) On the commencement, each environmental authority having effect under section 619 as a registration certificate is taken to be a single registration certificate for the 1 registered operator.

### **‘623 Effect of commencement on level 1 approvals for particular environmentally relevant activities**

‘(1) Subsection (2) applies to a level 1 approval, for a level 1 chapter 4 activity that, under section 619 is taken to be a registration certificate.

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<sup>17</sup> However, see section 318A (Changing anniversary day).

‘(2) Section 316 does not apply to the registration certificate unless the administering authority gives the registered operator a notice stating the administering authority is satisfied the risk of environmental harm from carrying out the activity is no longer insignificant.

‘(3) In this section—

“**level 1 approval**” means a level 1 approval immediately before the commencement of the *Environmental Protection Legislation Amendment Act 2003*.

### ‘624 Effect of commencement on particular approvals

‘(1) This section applies for a person who 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 of this section; or
- (b) an approval mentioned in the repealed *Environmental Protection (Interim) Regulation 1995*, section 63 or 65, in force immediately before the commencement of this section.

‘(2) From the commencement, the person is, for 1 year after the commencement, taken to be the registered operator for the activity, and—

- (a) for an approval mentioned in subsection (1)(a)—the approval, and any conditions of the approval, continue to have effect; or
- (b) for an approval mentioned in subsection (1)(b)—the approval, and any conditions of the approval, continue to have effect until the person stops carrying out the activity.

‘(3) The person must, within 1 year of the commencement, give the administering authority the same details the person would have to give the administering authority if the person were applying for a registration certificate.

‘(4) If the person complies with subsection (3), the administering authority must give the person a registration certificate.

**‘625 Effect of commencement on applications for development approvals for level 2 environmentally relevant activities**

‘(1) Subsection (2) applies for an application for a development approval for a level 2 chapter 4 activity that had not lapsed immediately before the commencement of this section.

‘(2) Before carrying out the activity under the development approval, the person who proposes to carry out the activity must obtain a registration certificate.

**‘626 Effect of commencement on particular applications in progress**

‘(1) This section applies to—

- (a) an application for an environmental authority for a chapter 4 activity not decided before the commencement of this section, including an application mentioned in section 611; or
- (b) an application to amend, surrender or transfer an environmental authority for a chapter 4 activity not decided before the commencement of this section.

‘(2) From the commencement—

- (a) processing of the application and all matters incidental to the processing must proceed as if the *Environmental Protection Legislation Amendment Act 2003* had not been enacted; and
- (b) any environmental authority granted, amended or transferred is taken to be an environmental authority to which section 619 applies.

‘(3) However, subsection (4) applies for an application mentioned in subsection (1) if—

- (a) the administering authority, by written notice, asks the applicant to give the administering authority a stated document or information relevant to the application; and
- (b) the applicant does not give the document or information to the administering authority within the time stated in the request or such other time the administering authority agrees to in writing.

‘(4) The application lapses at the end of the time stated in the request or agreed to.

### **‘627 Effect of commencement on development approval applications in progress**

‘(1) Subsection (2) applies if an application for a development approval, or for an amendment of a development condition of a development approval, for a chapter 4 activity, has not been decided and has not lapsed, immediately before the commencement of this section.

‘(2) From the commencement, processing of the application and all matters incidental to the processing must proceed as if the *Environmental Protection Legislation Amendment Act 2003* had not been enacted.

### **‘628 Effect of commencement on particular actions in progress**

‘(1) This section applies for an environmental authority mentioned in section 619.

‘(2) Subsection (3) applies if, immediately before the commencement of this section, all action, that could have been taken under this Act in relation to a notice given under section 133 or 135 about the amendment, suspension or cancellation of the environmental authority, had not been taken.

‘(3) From the commencement, any action that had not been taken before the commencement may be taken under this Act, as amended by the *Environmental Protection Legislation Amendment Act 2003*, with necessary changes.

‘(4) Subsection (5) applies if, immediately before the commencement of this section the environmental authority, remained suspended.

‘(5) From the commencement, the environmental authority, taken under section 619 to be a registration certificate, remains suspended for the period the environmental authority would have been suspended but for the commencement of the *Environmental Protection Legislation Amendment Act 2003*.

### **‘629 Continuing operation of s 594 (Limited application of s 427 for transitional authority)**

‘Section 594 continues to have effect after the commencement of the *Environmental Protection Legislation Amendment Act 2003*, section 27, as if section 27 had not commenced.

**‘630 Continuing operation of s 611 (Unfinished applications under existing Act)**

‘References to provisions of this Act in section 611 continue to operate as if the *Environmental Protection Legislation Amendment Act 2003* had not been enacted.’.

**46 Amendment of sch 1 (Original decisions)**

(1) Schedule 1, part 2, division 1, heading—  
*omit, insert—*

***‘Division 1B—Decisions under chapter 4***

<b>‘Section</b>	<b>Description of decision</b>
73F(2)	Refusal to grant a single registration certificate
73F(5)	Refusal to grant an application for registration
73L	Decision to cancel or suspend registration
73O(3)	Decision to refuse surrender of registration certificate

***‘Division 1C—Decisions under chapter 4A’.***

(2) Schedule 1, part 2, entries for sections 83 and 85(1)—  
*omit.*

(3) Schedule 1, part 2, entries for sections 110 and 112(3)—  
*omit.*

(4) Schedule 1, part 2, entry for section 318A(3)—  
*omit, insert—*

‘318A(4)            Decision not to change anniversary day’.

(5) Schedule 1, part 2, division 6—

*insert—*

- ‘621(4)            Decision to give registration certificate and development approval
- 623(2)            Decision to give a notice that the risk of environmental harm from carrying out a chapter 4 activity under an environmental authority is no longer insignificant’.

#### **47 Amendment of sch 3 (Dictionary)**

(1) Schedule 3, definitions “anniversary day”, “approval”, “conversion application”, “level 1 approval”, “level 1 approval (with development approval)”, “level 1 approval (without development approval)”, “level 2 approval”, “licence”, “licence (with development approval)”, “licence (without development approval)”, “proposed action”, “proposed action decision”, “provisional licence”, “schedule 8 development” and “standard environmental conditions”—

*omit.*

(2) Schedule 3—

*insert—*

‘“**anniversary day**”—

“Anniversary day”, for an environmental authority—

1. Generally, the “anniversary day” for an environmental authority means each anniversary of the day the authority is issued.<sup>18</sup>
2. However, if an environmental authority is a constituent part of an integrated authority, the “anniversary day” for the environmental authority is the day fixed under section 314(4)(b).
3. Also, if the anniversary day for an environmental authority is changed under section 318A, the “anniversary day” for the authority is the day as changed.
4. The anniversary day for an environmental authority does not change merely because the authority is amended or transferred.

“Anniversary day”, for a registration certificate—

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<sup>18</sup> See, however, section 602 (Anniversary day for certain transitional authorities).



1. Generally, the “anniversary day” for a registration certificate means each anniversary of the day the certificate took effect.
2. However, if the anniversary day for a registration certificate is changed under section 318A, the “anniversary day” for the certificate is the day as changed.
3. Also, if the registration certificate is issued for a continuing chapter 4 activity, the “anniversary day” for the certificate is the “anniversary day” for the previous registration certificate for the activity.
4. The anniversary day for a registration certificate does not change merely because the certificate is amended.

**“approval”** means an approval under chapter 4A to carry out a level 2 environmentally relevant activity.

**“business days”**, other than for chapter 3, part 1, does not include a day between 26 December and 1 January of the following year.

**“chapter 4 activity”** means an environmentally relevant activity, other than a mining activity or a petroleum activity.

**“level 2 approval”** see section 74(c).

**“licence”** means a licence under section 74(a), including a provisional licence.

**“mobile and temporary environmentally relevant activity”** means a chapter 4 activity, other than a activity that is dredging material, extracting rock or other material, or the incinerating of waste—

- (a) carried out at various premises using transportable plant or equipment, including a vehicle; and
- (b) that does not result in the building of any permanent structures or any physical change of the landform at the premises (other than minor alterations solely necessary for access and setup including, for example, access ways, footings and temporary storage areas); and
- (c) carried out at 1 location and—
  - (i) for less than 28 days in a calendar year but, other than for regulated waste transport, for not more than 6 times in a calendar year; or

- (ii) the activity is necessarily associated with, and is exclusively used in the construction or demolition phase of a project.

**“petroleum activity”** means an environmentally relevant activity that is carried out—

- (a) on land the subject of any of the following authorities granted or issued under the *Petroleum Act 1923*—
  - (i) a prospecting petroleum permit;
  - (ii) an authority to prospect;
  - (iii) a petroleum lease;
  - (iv) a pipeline licence; and
- (b) under the authority.

**“proposed action”**—

- (a) for chapter 4, part 4—see section 73J(1)(a); or
- (b) for chapter 4A, part 5, division 2—see section 133(1)(a); or
- (c) for chapter 5, part 12, division 2—see section 295(1)(a).

**“proposed action decision”**—

- (a) for chapter 4, part 4—see section 73L(2); or
- (b) for chapter 4A, part 5, division 2—see 135(2); or
- (c) for chapter 5—see section 297(2).

**“provisional licence”** see section 74(b).

**“registered operator”** means the holder of a registration certificate, for a chapter 4 activity, issued under section 73F and in force.

**“registration certificate”** see section 73F.

**“self-assessable development”** means self-assessable development as defined under the Integrated Planning Act.

**“standard environmental conditions”**, for an environmental authority or a chapter 4 activity, means the standard environmental conditions approved for the authority or activity under section 549.’.

(3) Schedule 3, definition “standard criteria”, paragraph (g)—  
*insert—*

- ‘(v) a development approval; and’.

## **PART 3—AMENDMENT OF INTEGRATED PLANNING ACT 1997**

### **48 Act amended in pt 3**

This part amends the *Integrated Planning Act 1997*.

### **49 Amendment of s 1.3.5 (Definitions for terms used in “development”)**

Section 1.3.5, definition “material change of use”—  
*omit, insert—*

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

- (a) generally—
  - (i) the start of a new use of the premises; or
  - (ii) the re-establishment on the premises of a use that has been abandoned; or
  - (iii) a material change in the intensity or scale of the use of the premises; or
- (b) for administering IDAS under the *Environmental Protection Act 1994* for environmentally relevant activities (other than for a mining activity, a petroleum activity or a mobile and temporary environmentally relevant activity)—
  - (i) the start of a new environmentally relevant activity on the premises; or
  - (ii) an increase in the threshold of an environmentally relevant activity on the premises; or
  - (iii) the re-establishment on the premises of an environmentally relevant activity that has been abandoned; or
  - (iv) a material change in the intensity or scale of an environmentally relevant activity on the premises.’.

## **50 Insertion of new s 3.5.33A**

After section 3.5.33—

*insert—*

### **‘3.5.33A When condition may be changed or cancelled by assessment manager or concurrence agency**

‘(1) This section applies for a development condition under another Act if, under the other Act, ‘development condition’ is defined with reference to a development approval.

‘(2) However, if under the other Act an entity is authorised to change or cancel conditions of a development approval in a different way, the other Act prevails to the extent of any inconsistency with this section.

‘(3) The development condition may be changed or cancelled by—

- (a) if the condition was imposed as a concurrence agency condition—the entity that was the concurrence agency; or
- (b) if the condition was imposed by an assessment manager—the entity that was the assessment manager; or
- (c) if paragraph (a) or (b) does not apply—the entity that has jurisdiction for the condition.

‘(4) However, the condition may be changed or cancelled only on a ground mentioned in the other Act.<sup>19</sup>

‘(5) The change or cancellation may be made without the consent of the owner of the land to which the approval attaches and any occupier of the land.

‘(6) Section 3.5.30 applies to the changed condition.

‘(7) If the entity is satisfied it is necessary to change or cancel the condition, the entity must give written notice to the owner of the land to which the approval attaches and any occupier of the land.

‘(8) The notice must state—

- (a) the proposed change or cancellation and the reasons for the change or cancellation; and

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<sup>19</sup> See, for example, the *Environmental Protection Act 1994*, section 73C.

- (b) that each person to whom the notice is given may make a written submission to the entity about the proposed change or cancellation; and
- (c) the time, which must be at least 15 business days after the notice is given to the holder, within which the submission may be made.

‘(9) After considering any submissions, the entity must give to each person to whom the notice was given—

- (a) if the entity is not satisfied the change or cancellation is necessary—written notice stating it has decided not to change or cancel the condition; or
- (b) if the entity is satisfied the change or cancellation is necessary—written notice stating it has decided to change or cancel the condition, and include details of the changed conditions or cancellation.

‘(10) If the entity was a concurrence agency, the entity must also give the entity that was the assessment manager written notice of the change or cancellation.

‘(11) The changed condition or cancellation takes effect from the day the notice is given to the owner of the land.’.

## **51 Insertion of new ch 3, pt 8**

After section 3.7.8—

*insert—*

### **‘PART 8—APPLYING IDAS TO MOBILE AND TEMPORARY ENVIRONMENTALLY RELEVANT ACTIVITIES**

#### **‘3.8.1 Mobile and temporary environmentally relevant activities**

‘(1) For administering IDAS under the *Environmental Protection Act 1994*, a mobile and temporary environmentally relevant activity is taken to be development.

‘(2) For applying IDAS to assessable development mentioned in schedule 8, part 1, table 5, item 3, the following changes to IDAS apply—

- (a) a description of the land and the consent of the owner of the land is not a mandatory part of the approved form; and
- (b) the development approval does not attach to land; and
- (c) the development approval applies for the activity wherever it is carried out; and
- (d) the development approval applies to and binds any person carrying out the activity under the approval.’.

**52 Amendment of s 4.1.31 (Appeals for matters arising after approval given (no co-respondents))**

Section 4.1.31(1)(b), after ‘section’—

*insert—*

‘3.5.33A(9)(b) or’.

**53 Amendment of s 4.3.2 (Self-assessable development must comply with codes)**

Section 4.3.2—

*insert—*

‘(2) Subsection (1) does not apply to a contravention of a standard environmental condition of a code of environmental compliance under the *Environmental Protection Act 1994*.’.

**54 Amendment of sch 8**

(1) Schedule 8, part 1, table 2, item 1—

*omit, insert—*

‘For an environmentally relevant activity <sup>a</sup> ’	
1	Making a material change of use of premises for an environmentally relevant activity (other than a mining activity or petroleum activity) for which a code of environmental compliance has not been made under the <i>Environmental Protection Regulation 1998</i> .’.

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a Table 2, item 1 originally commenced 1 July 1998, and subsequently amended

(2) Schedule 8, part 1, table 2—

*insert—*

‘Contaminated land management	
5	<p>Making a material change of use of premises if all or part of the land forming part of the premises is on the environmental management register or contaminated land register under the <i>Environmental Protection Act 1994</i>, unless—</p> <ul style="list-style-type: none"> <li>(a) a suitability statement has been given and a site management plan has been approved for the land for the intended use and the application only involves— <ul style="list-style-type: none"> <li>(i) the fit-out of a building on the land; or</li> <li>(ii) minor site excavation, including, for example, post holes for open-sided non-habitable structures; or</li> </ul> </li> <li>(b) there is currently a notifiable activity on the land and the activity is continuing; or</li> <li>(c) the proposed use is industrial and only involves minor site excavation, including, for example, post holes for open-sided non-habitable structures; or</li> <li>(d) the land is used for a mining activity or petroleum activity.</li> </ul>

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6	<p>Making a material change of use of premises if all or part of the land forming part of the premises is used for, or if there is no existing use was last used for—</p> <ul style="list-style-type: none"> <li>(a) a notifiable activity; or</li> <li>(b) an industrial activity (other than for a mining activity or petroleum activity), and the proposed use is for child care, educational, recreational or residential purposes, including a caretaker residence on industrial land;</li> </ul> <p>unless for paragraph (a)—</p> <ul style="list-style-type: none"> <li>(c) a suitability statement, removing the land from the environmental management register, has been given under the <i>Environmental Protection Act 1994</i> for the existing use, or if there is no existing use, the last use, and the following both apply— <ul style="list-style-type: none"> <li>(i) no new notifiable activity has occurred on the land since the suitability statement was issued;</li> <li>(ii) the land is not otherwise contaminated by a hazardous contaminant; or</li> </ul> </li> <li>(d) a suitability statement has been given, and a site management plan has been approved, for the land for the intended use, and the application involves only— <ul style="list-style-type: none"> <li>(i) the fit-out of a building on the land; or</li> <li>(ii) minor site excavation, including, for example, post holes for open-sided non-habitable structures; or</li> </ul> </li> <li>(e) the land is used for a mining activity or petroleum activity.</li> </ul>
7	<p>Making a material change of use of premises if all or part of the premises is in an area for which an area management advice has been given for natural mineralisation or industrial activity (other than for a mining activity or petroleum activity), and the proposed use is for child care, educational, recreational or residential purposes, including a caretaker residence on industrial land.’</p>

(3) Schedule 8, part 1, table 5—

*insert—*

‘For an environmentally relevant activity	
3	<p>A mobile and temporary environmentally relevant activity for which a code of environmental compliance has not been made under the <i>Environmental Protection Regulation 1998</i>.’</p>

(4) Schedule 8, part 2—



*insert—*

**‘Table 5: Various aspects of development**

For an environmentally relevant activity	
1	An environmentally relevant activity (other than a mining activity or petroleum activity), for which a code of environmental compliance has been made under the <i>Environmental Protection Regulation 1998</i> .

**55 Amendment of sch 8A (Assessment manager for development applications)**

Schedule 8A, table 3—

*insert—*

‘Contaminated land management		
8	If tables 1 and 2 do not apply and the application is for—  (a) assessable development under schedule 8, part 1, table 2, item 5, 6 or 7; and  (b) no other assessable development.	Chief executive administering the <i>Environmental Protection Act 1994</i> .

**56 Amendment of sch 10 (Dictionary)**

Schedule 10—

*insert—*

‘**“environmentally relevant activity”** see the *Environmental Protection Act 1994*, section 18.

**“hazardous contaminant”** see the *Environmental Protection Act 1994*, schedule 3.

**“mining activity”**—

1. “Mining activity” see the *Environmental Protection Act 1994*, section 147.
2. “Mining activity” includes an activity, circumstance, or matter provided for under, or to which, a special agreement Act applies

and carried out on a mining tenement under the *Mineral Resources Act 1989*.

**“mobile and temporary environmentally relevant activity”** see the *Environmental Protection Act 1994*, schedule 3.

**“notifiable activity”** see the *Environmental Protection Act 1994*, schedule 3.

**“petroleum activity”** see the *Environmental Protection Act 1994*, schedule 3.

**“site management plan”** see the *Environmental Protection Act 1994*, schedule 3.

**“special agreement Act”** see the *Environmental Protection Act 1994*, section 614(2).

**“suitability statement”** see the *Environmental Protection Act 1994*, schedule 3.’.

## SCHEDULE

### MINOR AMENDMENTS OF ENVIRONMENTAL PROTECTION ACT 1994

section 3

- 1 Section 38(2)(h), ‘section 6’—**  
*omit, insert—*  
‘section 3<sup>20</sup>’.
  
- 2 Chapter 4, part 3, division 3, heading, ‘3’ (as it was before the commencement of this schedule)—**  
*omit, insert—*  
‘2’.
  
- 3 Section 99, heading, ‘3’—**  
*omit, insert—*  
‘2’.
  
- 4 Chapter 4, part 3, division 4, heading, ‘4’ (as it was before the commencement of this schedule)—**  
*omit, insert—*  
‘3’.

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20 *Local Government (Aboriginal Lands) Act 1978*, section 3 (Grand of leases to councils)

## SCHEDULE (continued)

**5 Section 105, heading, ‘3’—***omit, insert—*

‘2’.

**6 Chapter 4, part 5, heading, ‘5’ (as it was before the commencement of this schedule)—***omit, insert—*

‘3’.

**7 Section 117, heading, ‘5’—***omit, insert—*

‘3’.

**8 Section 122(2), ‘3 or 4’—***omit, insert—*

‘2’.

**9 Chapter 4, part 6, heading, ‘6’ (as it was before the commencement of this schedule)—***omit, insert—*

‘4’.

**10 Section 128C(2), ‘5’—***omit, insert—*

‘3’.

## SCHEDULE (continued)

- 11 Chapter 4, part 7, heading, ‘7’ (as it was before the commencement of this schedule)—**  
*omit, insert—*  
‘5’.
- 12 Chapter 4, pt 8, heading ‘8’ (as it was before the commencement of this schedule)—**  
*omit, insert—*  
‘6’.
- 13 Section 140(2), ‘Sections 426 and 427 do’—**  
*omit, insert—*  
‘Section 426 does’.
- 14 Sections 311(3) and (4)(b), 312(3), 315A(2), 315B(1), 315D(5), 520(1)(c) and 540(1)(d), ‘chapter 4’—**  
*omit, insert—*  
‘chapter 4A’.
- 15 Section 332(1)(a), ‘, other than a level 1 approval’—**  
*omit.*
- 16 Sections 364(1) and (2)(a) and 365(1), ‘1 or’—**  
*omit.*
- 17 Section 366(1)(b)—**  
*omit.*

## SCHEDULE (continued)

- 18 Section 366(6), from ‘must’ to ‘decide’—**  
*omit, insert—*  
‘must decide’.
- 19 Chapter 8, part 2, heading, ‘and development approvals’—**  
*omit.*
- 20 Section 430(2), penalty, paragraph (a), ‘, a level 1 approval’—**  
*omit.*
- 21 Section 430(3), penalty, paragraph (a), ‘, a level 1 approval’—**  
*omit.*
- 22 Chapter 8, part 2, division 4, heading—**  
*omit, insert—*  
**‘PART 2A—OFFENCES RELATING TO CONDITIONS’.**
- 23 Section 520(2)(a), ‘chapter 4, part 3, division 2’—**  
*omit, insert—*  
‘chapter 4A, part 2, division 1’.
- 24 Section 520(2)(b), ‘chapter 4, part 5’—**  
*omit, insert—*  
‘chapter 4A, part 3’.
- 25 Section 617(1)(b)(ii), ‘as defined in section 75’—**  
*omit.*

SCHEDULE (continued)

- 26** Schedule 3, definitions “amendment application”, “applicants”, “application notice”, “correction”, “environmental authority”, “person”, “properly made submission”, “proposed transferee”, “public notice requirement”, “submission period”, “surrender application”, “surrender notice” and “transfer application”, ‘chapter 4’—

*omit, insert—*

‘chapter 4A’.