



Queensland

# **Environmental Protection and Other Legislation Amendment Act 2004**

**Act No. 48 of 2004**





## Queensland

# Environmental Protection and Other Legislation Amendment Act 2004

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Queensland

# **Environmental Protection and Other Legislation Amendment Act 2004**

## **Act No. 48 of 2004**

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

**[Assented to 18 November 2004]**

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**The Parliament of Queensland enacts—**

## **Part 1 Preliminary**

### **1 Short title**

This Act may be cited as the *Environmental Protection and Other Legislation Amendment Act 2004*.

### **2 Commencement**

This Act commences on a day to be fixed by proclamation.

## **Part 2 Amendment of Coastal Protection and Management Act 1995**

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

This part amends the *Coastal Protection and Management Act 1995*.

### **4 Amendment of s 9 (Meaning of *canal*)**

Section 9(3)—

*omit, insert—*

‘(3) However, *canal* does not include any part of tidal water containing facilities that are used commercially or by members of a club or association for 1 or more of the following—

- (a) boat launching, landing, berthing or storing;
- (b) boat repairs of a minor nature;

- (c) boat provisioning, fueling or servicing;
- (d) recreation, comfort and convenience of persons who own or use boats.’.

**5 Amendment of s 25 (Functions of regional consultative group)**

Section 25(1)(b), ‘ecological’—

*omit, insert—*

‘ecologically’.

**6 Amendment of s 39 (Public notice inviting submissions on draft regional plan)**

Section 39(2)—

*insert—*

‘(e) identify any proposed coastal management district that may be declared under section 54(1)(a) when the final regional plan has effect.’.

**7 Amendment of ch 2, pt 3, hdg (Coastal management districts and erosion prone areas)**

Chapter 2, part 3, heading, ‘and erosion prone areas’—

*omit.*

**8 Amendment of s 54 (Declaration of coastal management districts)**

Section 54(1)(a), ‘giving effect to the plan; or’—

*omit, insert—*

‘made at the same time the regional plan, or an amendment of the regional plan, is given effect;<sup>1</sup> or’.

<sup>1</sup> See section 47 (Approval of final coastal plan).

## 9      **Insertion of new s 58A**

Chapter 2, part 3, division 1—

*insert—*

### **‘58A    Amendment of coastal management districts in s 169**

- ‘(1) This section applies to an area that became a coastal management district under section 169, to the extent the area has not been later declared a coastal management district under section 54.
- ‘(2) Subsection (3) applies if—
- (a) a coastal engineering assessment of an erosion prone area is prepared for a location; and
  - (b) the chief executive agrees with the assessment; and
  - (c) the chief executive amends the erosion prone area under section 71; and
  - (d) when the assessment is made, the width of the erosion prone area at the location is the same as the width of the coastal management district at the location.
- ‘(3) The width of the coastal management district at the location is amended to be the same as the width of the amended erosion prone area at the location.
- ‘(4) To remove any doubt, it is declared that public notice of the amendment of the coastal management district under this section is not required.’.

## 10     **Amendment of s 60 (Tidal works notices)**

(1) Section 60(1)—

*omit, insert—*

- ‘(1) If, in the chief executive’s opinion, tidal works need repair, are abandoned or should be removed, the chief executive may give a notice (a *tidal works notice*) to 1 or more of the following—
- (a) the person responsible for the tidal works;

- (b) the person responsible for the maintenance of the tidal works;
  - (c) the owner of freehold land, or the lessee of land leased from the State, if the land is connected to, or receives, the benefit of the tidal works.’.
- (2) Section 60(3), ‘works’—  
*omit, insert—*  
‘tidal works’.

**11 Amendment of s 71 (Amending erosion prone areas)**

Section 71(2)—

*insert—*

- ‘(c) advise each owner of land affected by the amendment how the erosion prone area has been amended.’.

**12 Omission of ch 2, pt 5, div 1, sdiv 3 (Removal of quarry materials may require other approval)**

Chapter 2, part 5, division 1, subdivision 3—

*omit.*

**13 Amendment of s 85 (Suspension or cancellation—grounds)**

Section 85(b)(iii)—

*omit, insert—*

‘(iii) has not, within 1 year after the day the notice was issued, applied for—

- (A) if the holder must have a development permit for the removal of the quarry material—a development permit; or
- (B) if the removal of the quarry material is an environmentally relevant activity—the required authority; or’.

---

**14 Omission of s 94 (Relationship with IPA)**

Section 94—

*omit.*

**15 Insertion of new ch 2, pt 5, div 2A**

After section 100—

*insert—*

**‘Division 2A Removal of quarry material may require other approvals****‘100A Removal of quarry material is subject to other approvals**

- ‘(1) An allocation notice or an approved dredge management plan authorises the holder, during the period the notice or plan is in force, to access quarry material.
- ‘(2) However, the holder is not authorised to remove any quarry material under the notice or plan until the holder has obtained—
  - (a) if the holder must have a development permit for the removal of the quarry material—a development permit; and
  - (b) if the removal of the quarry material is an environmentally relevant activity—the required authority.
- ‘(3) Subsection (4) applies to an application, involving the removal of quarry material below high water mark, for—
  - (a) a development permit for—
    - (i) a material change of use mentioned in the *Integrated Planning Act 1997*, schedule 8, part 1, table 2; or
    - (ii) operational work mentioned in the *Integrated Planning Act 1997*, schedule 8, part 1, table 4, item 5; or



- (iii) a mobile and temporary environmentally relevant activity mentioned in the *Integrated Planning Act 1997*, schedule 8, part 1, table 5, item 3; or
  - (b) an environmental authority.
- ‘(4) The application must be supported by—
- (a) evidence of an allocation notice or an approved dredge management plan for the removal of the quarry material mentioned in the application; or
  - (b) the written consent of the chief executive to the application.
- ‘(5) However, the chief executive may refuse to consent if—
- (a) the person is not the holder of an allocation notice or an approved dredge management plan; or
  - (b) the person is the holder of an allocation notice or an approved dredge management plan but the works to which the application relates are not consistent with the notice or plan.
- ‘(6) Also, subsection (2)(a) does not apply to the holder of an approved dredge management plan if section 100B applies to the plan.

### **‘100B Relationship with Integrated Planning Act 1997**

- ‘(1) This section applies to a person who has an approved dredge management plan dealing with operational work mentioned in the *Integrated Planning Act 1997*, schedule 8, part 1, table 4, item 5.
- ‘(2) Despite the *Integrated Planning Act 1997*, section 3.1.4, the person is not required to have a development approval for the work if—
- (a) the chief executive would be the assessment manager for the work under that Act; and
  - (b) an entity that would be a referral agency for the work under that Act has advised the chief executive it has no requirements for the work or its requirements for the work have been incorporated into the plan.

- ‘(3) Also, despite the *Integrated Planning Act 1997*, section 3.3.3, the person is not required to refer a development application for the work to the chief executive if the chief executive is a referral agency for the work.<sup>2</sup>
- ‘(4) Subsections (2) and (3) apply only to the extent the operational works have been approved under the plan.’.

**16      Amendment of s 102 (Royalty or price for quarry material)**

Section 102(3)—

*omit.*

**17      Amendment of s 120 (Registration of instruments—construction of artificial waterways)**

Section 120(1)—

*insert—*

- ‘(c) if the artificial waterway is not a canal—the plan of subdivision is certified by a local government under section 119(2).’.

**18      Insertion of new ch 2, pt 6, div 5**

After section 120—

*insert—*

**‘Division 5                      Exemption certificates**

**‘120A Application for exemption certificate**

- ‘(1) A person may apply to the chief executive for an exemption certificate to carry out operational work that would have insignificant impact on coastal management.
- ‘(2) The application must be supported by enough information to enable the chief executive to decide the application.

---

<sup>2</sup> *Integrated Planning Act 1997*, sections 3.1.4 (When is a development permit necessary) and 3.3.3 (Applicant gives material to referral agency)

- ‘(3) The chief executive may require—
  - (a) the applicant to give additional information about the application; or
  - (b) any information included in the application, or any additional information required under paragraph (a), to be verified by statutory declaration.
- ‘(4) The chief executive must require any entity that would have been a referral agency, if the application had been a development application, to give advice or comment about the application.

#### **‘120B Deciding application for exemption certificate**

- ‘(1) The chief executive must decide the application within—
  - (a) if a request is made under section 120A(3) or (4)—20 business days after the day the chief executive receives the last information requested; or
  - (b) otherwise—20 business days after the day the chief executive receives the application.
- ‘(2) If the chief executive approves the application, with or without conditions, the chief executive must, as soon as practicable after approving the application, give the applicant an exemption certificate.
- ‘(3) If the chief executive refuses the application or approves it with conditions, the chief executive must, as soon as practicable, give the applicant a notice stating the reasons for the refusal or the conditions.
- ‘(4) If an entity that would have been a concurrence agency if the application had been a development application tells the chief executive to refuse the application, the chief executive must refuse the application.
- ‘(5) If the chief executive does not decide the application under this section, the application is taken to be refused.

**‘120C Chief executive may give exemption certificate without application**

‘The chief executive may, at any time and without a person having applied under section 120A, give the person an exemption certificate to carry out operational work mentioned in section 120A(1).’.

**19 Amendment of s 123 (Development permits—right to use and occupy)**

Section 123(1), ‘on land under tidal water’—  
*omit.*

**20 Amendment of s 124 (Obligation to keep certain tidal works in safe condition)**

Section 124(1)(b), ‘on land under tidal water’—  
*omit.*

**21 Replacement of s 165 (Delegation by chief executive)**

Section 165—  
*omit, insert—*

**‘165 Delegation by chief executive**

‘(1) The chief executive may delegate the executive’s powers under this Act to—

- (a) an appropriately qualified—
  - (i) authorised person; or
  - (ii) public service officer; or
- (b) a local government; or
- (c) a port authority; or
- (d) a statutory authority.

‘(2) A delegation of a chief executive’s power to a local government may permit the subdelegation of the power to an appropriately qualified entity.

- ‘(3) Also, the chief executive may appoint an appropriately qualified public service officer to act as a member of, and as the chairperson of, the advisory council in the absence of the chief executive.’.

## **22 Amendment of s 167 (Regulation-making power)**

- (1) Section 167(2)—

*insert—*

- ‘(j) declaring, for this Act, the downstream limit of a watercourse to be the downstream limit of the watercourse under the *Water Regulation 2002*.’.

- (2) Section 167(3), ‘(2)(f)’—

*omit, insert—*

- ‘(2)(g)’.

## **23 Amendment of s 171 (Continuing effect of authorities under Harbours Act)**

Section 171(2), ‘item 3D’—

*omit, insert—*

- ‘table 4, item 5’.

## **24 Amendment of s 176 (Continuing effect of approvals under Canals Act)**

- (1) Section 176(2)(a)—

*omit, insert—*

- ‘(a) the provisional approval, and any conditions of the approval, have effect as if the approval were a development permit for a material change of use of premises, but only to the extent authorised by the approval; and’.

- (2) Section 176(2)(b)(ii)—

*omit, insert—*

‘(ii) operational works to construct the waterway and the access channel.’.

**25 Omission of s 181 (Applications to reconfigure a lot in a coastal management district)**

Section 181—

*omit.*

**26 Insertion of new ch 6, pt 4**

After section 186—

*insert—*

**‘Part 4 Transitional provisions for  
Environmental Protection and  
Other Legislation Amendment  
Act 2004**

**‘187 Integrated Planning Act 1997 applies to all  
development relating to the construction of canals**

‘(1) Subsection (2) applies for—

- (a) a provisional approval to construct a canal granted under the repealed Canals Act, section 5; or
- (b) a provisional approval, mentioned in section 179(1)(f), to construct a canal and granted before or after the commencement of this section.

‘(2) The *Integrated Planning Act 1997* applies for development relating to the construction of the canal authorised by the approval.

**‘188 Applications to reconfigure a lot in a coastal  
management district**

‘(1) Subsections (3) and (4) apply if—

- (a) before 20 October 2003, a person—

- (i) held an authority from a local government to reconfigure a lot in a coastal management district; and
    - (ii) had not applied for the Governor in Council's consent under the repealed Beach Protection Act, section 45(4); and
  - (b) the person intends to reconfigure the lot.
- ‘(2) Subsections (3) and (4) also apply if—
- (a) before 20 October 2004, an application to reconfigure a lot in a coastal management district was made to a local government under the *Integrated Planning Act 1997*; and
  - (b) the application was not decided before 20 October 2003; and
  - (c) the local government issues a development permit for the reconfiguration on or after 20 October 2003.
- ‘(3) The person must apply for a further development approval for the reconfiguration under the *Integrated Planning Act 1997*.
- ‘(4) For an application made under subsection (3)—
- (a) the chief executive is the assessment manager; and
  - (b) there are no referral agencies; and
  - (c) no referral coordination is required; and
  - (d) only code assessment is required.
- ‘(5) The chief executive may give the registrar of titles notice about land to which an application under subsection (3) applies.
- ‘(6) If the chief executive gives the registrar a notice under subsection (5) the registrar—
- (a) must record the notice in a way that a search of the land registry will show that the land is subject to this Act; and
  - (b) must not register a plan of subdivision dealing with the reconfiguration of the land until the chief executive has issued a development permit for the application.

- ‘(7) If the registrar has recorded information under subsection (6) and the chief executive becomes aware the information no longer applies or has changed—
- (a) the chief executive must give the registrar notice that the information no longer applies or has changed; and
  - (b) the registrar must update the record.

### **‘189 Particular permits under the Beach Protection Act**

- ‘(1) This section applies to the following permits—
- (a) a permit under the repealed Beach Protection Act, section 47(1A);
  - (b) a permit issued for an application under the repealed Beach Protection Act, section 47(1A) and taken to be a development permit;
  - (c) a development permit issued before 31 December 2004 for operational work mentioned in the *Integrated Planning Act 1997*, schedule 8, part 1, table 4, item 5(a) or (b)(i) or (iii).
- ‘(2) Despite section 177, the *Integrated Planning Act 1997*, section 3.5.21(1) does not apply if the work authorised by the permit may be carried out more than once.
- ‘(3) A permit to which this section applies lapses at the end of the currency period for the permit.

### **‘190 Assessment manager for particular applications**

- ‘(1) This section applies to a deemed approval mentioned in section 177 if the holder of the approval wishes to make a minor change to it.
- ‘(2) The chief executive must decide who will be the assessment manager for the application to amend the approval.
- ‘(3) An entity that would have been a concurrence agency for the deemed approval is taken to be a concurrence agency for the application to amend.



- ‘(4) Subsection (2) applies despite the *Integrated Planning Act 1997*, section 3.5.24 but subject to subsection (5).
- ‘(5) The local government may elect not to be the assessment manager for the application to amend.
- ‘(6) However, if the local government elects not to be the assessment manager for the application to amend, the local government can not be a referral agency.

### ‘191 When particular applications lapse

- ‘(1) Subsection (3) applies if—
  - (a) an application was made under the Beach Protection Act before 20 October 2003; and
  - (b) the chief executive has, by written notice, asked the applicant to give the chief executive, within 1 year, a stated document or information relevant to the application; and
  - (c) the applicant did not give the stated document or information to the chief executive within 1 year after the request.
- ‘(2) Subsection (3) also applies for an application mentioned in section 180(1) if—
  - (a) the chief executive has, by written notice, asked the applicant to give the chief executive, within 1 year, a stated document or information relevant to the application; and
  - (b) the applicant did not give the stated document or information to the chief executive within 1 year after the request.
- ‘(3) The application lapses.’.

### 27 Amendment of schedule (Dictionary)

- (1) Schedule, definition *tidal water*—  
*omit.*
- (2) Schedule—

*insert—*

***‘appropriately qualified—***

- 1 ***Appropriately qualified***, for an individual to whom a power of the chief executive under this Act may be delegated, includes having the qualifications, experience or standing appropriate to exercise the power.

*Example of standing—*

a person’s classification level in the public service

- 2 If a power delegated to a local government may be subdelegated by the local government, the following are ***appropriately qualified*** entities for the subdelegation—
- (a) the local government’s mayor;
  - (b) a standing committee or a chairperson of a standing committee of the local government;
  - (c) the local government’s chief executive officer;
  - (d) an employee of the local government, having the qualifications, experience or standing appropriate to exercise the power.

*Example of standing for paragraph (d)—*

the employee’s classification level in the local government

***chapter 4 activity*** see the *Environmental Protection Act 1994*, schedule 3.

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

***operational work*** see the *Integrated Planning Act 1997*, section 1.3.5.

***referral agency*** see the *Integrated Planning Act 1997*, schedule 10.

***registration certificate*** see the *Environmental Protection Act 1994*, section 73F.

***required authority***, for an environmentally relevant activity, means any of the following required for the activity under the *Environmental Protection Act 1994—*

- (a) for a chapter 4 activity—



**7A Notes in text**

‘A note in the text of this Act is part of this Act.’.

**30 Amendment of s 20 (Levels for environmentally relevant activities)**

Section 20(2) and (3)—

*omit, insert—*

‘(2) A level 1 mining project is a level 1 environmentally relevant activity.

‘(3) A level 2 mining project is a level 2 environmentally relevant activity.’.

**31 Amendment of s 37 (When EIS process applies)**

(1) Section 37(1)(b) to (d)—

*renumber* as section 37(c) to (e).

(2) Section 37(1)—

*insert—*

‘(b) an EIS requirement is in force in relation to an application for an environmental authority (petroleum activities); or’.

(3) Section 37(2), ‘subsection (1)(a)’—

*omit, insert—*

‘subsection (1)(a) or (b)’.

**32 Replacement of ch 4A (Environmental authorities for petroleum activities)**

Chapter 4A—

*omit, insert—*

## ‘Chapter 4A Environmental authorities for petroleum activities

### ‘Part 1 Preliminary

#### ‘74 Purpose of ch 4A

- ‘(1) The purpose of this chapter is to provide for environmental authorities for petroleum activities.
- ‘(2) An environmental authority issued under this chapter is an *environmental authority (petroleum activities)*.

#### ‘75 Types of environmental authority (petroleum activities)

- ‘(1) The types of environmental authority (petroleum activities) are a code compliant authority and a non-code compliant authority.
- ‘(2) A *code compliant authority* is an environmental authority (petroleum activities) issued under part 2, division 3, subdivision 1.<sup>3</sup>
- ‘(3) However, a code compliant authority ceases to be a code compliant authority if, under part 3, 4 or 6,<sup>4</sup> its conditions are amended or new conditions are imposed on it.
- ‘(4) A *non-code compliant authority* is any environmental authority (petroleum activities) other than a code compliant authority.

#### ‘76 What is a *petroleum authority* and the *Petroleum legislation*

- ‘(1) A *petroleum authority* is—

---

3 Part 2, division 3, subdivision 1 (Code compliant authorities)

4 Part 3 (Amending environmental authorities (petroleum activities) by application), 4 (Transfers) or 6 (Amendment, cancellation or suspension by administering authority)

- (a) a 1923 Act petroleum tenure granted under the *Petroleum Act 1923*; or
  - (b) a petroleum authority granted under the *Petroleum and Gas (Production and Safety) Act 2004*; or
  - (c) a licence, permit, pipeline licence, primary licence, secondary licence or special prospecting authority granted under the *Petroleum (Submerged Lands) Act 1982*.
- ‘(2) The *Petroleum and Gas (Production and Safety) Act 2004* is referred to as the **P&G Act**.
- ‘(3) The Acts mentioned in subsection (1) are collectively referred to as the ***petroleum legislation***.

**‘77      What is a petroleum activity, a level 1 petroleum activity and a level 2 petroleum activity**

- ‘(1) A ***petroleum activity*** is—
- (a) an activity that, under the *Petroleum Act 1923* is an authorised activity for a 1923 Act petroleum tenure under that Act; or
  - (b) an activity that, under the P&G Act is an authorised activity for a petroleum authority under that Act; or
  - (c) exploring for or mining minerals under a licence, permit, pipeline licence, primary licence, secondary licence or special prospecting authority granted under the *Petroleum (Submerged Lands) Act 1982*; or
  - (d) rehabilitating or remediating environmental harm because of an activity mentioned in paragraphs (a) to (c); or
  - (e) action taken to prevent environmental harm because of an activity mentioned in paragraphs (a) to (d); or
  - (f) an activity required under a condition of an environmental authority (petroleum activities); or
  - (g) an activity required under a condition of an environmental authority (petroleum activities) that has ended or ceased to have effect, if the condition—

- (i) continues to apply after the authority has ended or ceased to have effect; and
  - (ii) has not been complied with.<sup>5</sup>
- ‘(2) A **level 1 petroleum activity** is a petroleum activity that, under section 20(1), is prescribed as a level 1 environmentally relevant activity.
- ‘(3) A **level 2 petroleum activity** is a petroleum activity that, under section 20(1), is prescribed as a level 2 environmentally relevant activity.

**‘78 What is a *relevant petroleum authority***

‘A ***relevant petroleum authority*** for a petroleum activity, environmental authority (petroleum activities) or an application for, or about, an environmental authority (petroleum activities), is the petroleum authority, or proposed petroleum authority, to which the environmental authority or application relates.

**‘79 What is a *relevant petroleum activity***

- ‘(1) A ***relevant petroleum activity***, for an application for, or about, an environmental authority (petroleum activities) is a petroleum activity the subject of the application.
- ‘(2) A ***relevant petroleum activity*** for an environmental authority (petroleum activities) is a petroleum activity the subject of the authority.

**‘80 What is a *petroleum project***

‘A ***petroleum project*** is all activities carried out, or proposed to be carried out, under 1 or more of the following, in any combination, as a single integrated operation—

- (a) a 1923 Act petroleum tenure granted under the *Petroleum Act 1923*;

---

<sup>5</sup> See sections 98 and 114 (Conditions that may and must be imposed) and schedule 3, definition *condition*.

- (b) a petroleum authority granted under the P&G Act;
- (c) a licence, permit, pipeline licence, primary licence, secondary licence or special prospecting authority granted under the *Petroleum (Submerged Lands) Act 1982*.

## **‘Part 2                      Applying for and obtaining environmental authority (petroleum activities)**

### **‘Division 1                      Preliminary**

#### **‘81              Definitions for pt 2**

‘In this part—

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

*relevant place*, for an environmental authority (petroleum activities), means a place, or a part of a place, to which the authority relates, but does not include premises, or a part of premises, used only for residential purposes.

*submission period*, for an application for an environmental authority (petroleum activities), means—

- (a) the submission period for the application under section 107(1)(b) and (2);<sup>6</sup> or
- (b) if section 109 applies—any new submission period fixed under section 109(3)(b).<sup>7</sup>

---

6      Section 107 (Required contents of application notice)

7      Section 109 (Substantial compliance may be accepted)



## **‘Division 2            General provisions for applications**

### **‘Subdivision 1        Restriction on who may apply**

#### **‘82        Restriction**

‘A person may apply for an environmental authority (petroleum activities) only if the person is the holder of, or the applicant for, a relevant petroleum authority for the application.

### **‘Subdivision 2        Petroleum projects**

#### **‘83        Single application required for petroleum project**

- ‘(1) This section applies to a person who may apply for an environmental authority (petroleum activities) for petroleum activities proposed to be carried out as a petroleum project.
- ‘(2) The person may only make a single application for a single environmental authority (petroleum activities) for all petroleum activities that form the project.
- ‘(3) If any relevant petroleum activity for the application is a level 1 petroleum activity—
  - (a) division 4,<sup>8</sup> must be complied with for the whole application; but
  - (b) a submission under section 110<sup>9</sup> can not be made about any relevant petroleum activity that is a level 2 petroleum activity.
- ‘(4) If the administering authority grants the application, it may issue—
  - (a) 1 environmental authority (petroleum activities) for all the activities; or

---

8    Division 4 (Level 1 petroleum activities)

9    Section 110 (Right to make submission)

- (b) 2 or more environmental authorities (petroleum activities) for the activities.

**‘84 Single environmental authority (petroleum activities) required for petroleum project**

- ‘(1) This section applies if an environmental authority (petroleum activities) has been granted for a petroleum project.
- ‘(2) The holder of the authority can not apply for a separate environmental authority (petroleum activities) for an additional petroleum activity proposed to be carried out as part of the petroleum project.
- ‘(3) Subsection (2) applies whether or not the additional activity is proposed to be carried out under another petroleum authority as part of the petroleum project.
- ‘(4) This section does not prevent the holder from applying to amend or replace the environmental authority.

**‘Subdivision 3 Joint applications**

**‘85 Application of sdiv 3**

‘This subdivision applies if 2 or more persons (*joint applicants*) jointly apply for 1 or more environmental authorities (petroleum activities).

**‘86 Joint application may be made**

- ‘(1) The administering authority may accept an application (a *joint application*) made for all the joint applicants by 1 of the joint applicants if it is satisfied the person is authorised to make the application for all the joint applicants.
- ‘(2) More than 1 joint application may be made by the person for the same joint applicants.

**‘87 Appointment of principal applicant**

- ‘(1) The joint applicants may appoint 1 of them as the principal applicant for a joint application made by them.
- ‘(2) However, the appointment may be made only—
  - (a) in the joint application; or
  - (b) by a signed notice from all the joint applicants to the administering authority.
- ‘(3) The joint applicants may, by a signed notice from all of them to the authority, cancel the appointment.

**‘88 Effect of appointment**

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

- (a) the principal applicant may, for all applicants for the application, give the administering authority a notice or other document relating to the application; and
- (b) the authority may—
  - (i) give a notice or other document relating to the application to all the applicants, by giving it to the principal applicant; or
  - (ii) make a requirement under this chapter relating to the application of all the applicants, by making it of the principal applicant.<sup>10</sup>

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<sup>10</sup> See also part 8 (Principal holders).

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**‘Division 3            Level 2 petroleum activities****‘Subdivision 1        Code compliant authorities****‘89        Operation of sdiv 1**

- ‘(1) This subdivision provides the process to obtain, by application, an environmental authority (petroleum activities) for a level 2 petroleum activity if—
- (a) there are relevant codes of environmental compliance for relevant petroleum activities for the authority; and
  - (b) the applicant elects to comply with the codes in carrying out relevant petroleum activities for the authority.<sup>11</sup>
- ‘(2) The election is taken to have been made on the making of an application under this subdivision.

**‘90        Requirements for application**

‘The application must—

- (a) be made to the administering authority in the approved form; and
- (b) describe—
  - (i) each relevant petroleum authority for the application; and
  - (ii) all relevant petroleum activities for the application; and
- (c) certify that the applicant can, in carrying out the relevant petroleum activities for the environmental authority (petroleum activities), comply with the code compliance condition;<sup>12</sup> and

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11 See also section 145V (Restrictions on authority or transfer taking effect).

12 See sections 93 (Code compliance condition) and 480(4) (False, misleading or incomplete documents).

- (d) be accompanied by the fee prescribed under a regulation.

*Note—*

A subsequent failure to comply with the code compliance condition may result in the commission on offence or in action to amend, suspend or cancel the authority. See sections 93, 145E(2)(b), 145F(2)(a) and 480(4).<sup>13</sup>

## **‘91 Deciding application**

- ‘(1) If the application complies with section 90, the administering authority must decide to grant the application.
- ‘(2) Otherwise, the administering authority must refuse the application.

## **‘92 Steps after granting application and the giving of financial assurance**

- ‘(1) If the administering authority decides to grant the application, it must take the steps mentioned in subsection (3)—
- (a) if, under a regulation, the application fee, or part of the fee, is required to accompany the application, within 8 business days after the later of—
- (i) the day the decision is made; or
- (ii) payment of the application fee or part of the fee; or
- (b) otherwise—within 8 business days after the decision is made.
- ‘(2) However, if, under section 145O,<sup>14</sup> financial assurance has been required for the proposed environmental authority (petroleum activities), subsection (1) does not apply until the requirement has been complied with.

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13 Sections 93 (Code of compliance condition), 145E (Other amendments), 145F (Conditions for cancellation or suspension) and 480 (False, misleading or incomplete documents)

14 Section 145O (Financial assurance may be required before authority is issued or transferred)

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- ‘(3) For subsection (1), the steps are—
- (a) issue the environmental authority in the approved form; and
  - (b) insert it in the appropriate register; and
  - (c) give the applicant a copy of the authority.<sup>15</sup>

### ‘93 Code compliance condition

- ‘(1) The code compliant authority is taken to include a condition (the *code compliance condition*) that the applicable codes of environmental compliance for relevant petroleum activities for the authority must be complied with.
- ‘(2) For subsection (1), the applicable codes are—
- (a) generally—the relevant codes of environmental compliance for relevant petroleum activities for the authority, as they were in force when the application was made; or
  - (b) if any code mentioned in paragraph (a) is changed or replaced—the changed or replaced code, from 1 year after the change or replacement.
- ‘(3) While the authority continues to be a code compliant authority, the code compliance condition is the only condition of the authority.<sup>16</sup>

## ‘Subdivision 2 Non-code compliant authorities

### ‘94 Operation of sdiv 2

- ‘(1) This subdivision provides the process to obtain, by application, an environmental authority (petroleum activities) for a level 2 petroleum activity if—

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<sup>15</sup> See however section 145V (Restrictions on authority or transfer taking effect).

<sup>16</sup> For when a code compliant authority becomes a non-code compliant authority, see section 75 (Types of environmental authority (petroleum activities)).

- (a) there are no relevant codes of environmental compliance for relevant petroleum activities for the authority; or
  - (b) there are relevant codes, but the applicant elects not to comply with the codes in carrying out relevant petroleum activities for the authority.<sup>17</sup>
- ‘(2) The election is taken to have been made on the making of an application under this subdivision.

### ‘95 Requirements for application

‘The application must—

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

### ‘96 Deciding application

‘The administering authority must, within the latest of the following periods to end, decide to grant or refuse the application—

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<sup>17</sup> See also section 145V (Restrictions on authority or transfer taking effect).

- (a) 20 business days after the application date;
- (b) 8 business days after the submission period for the application ends.

#### **‘97 Criteria for decision**

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

- (a) must comply with any relevant EPP requirement; and
- (b) subject to paragraph (a), must consider each of the following—
  - (i) the standard criteria;
  - (ii) additional information given in relation to the application;
  - (iii) any suitability report obtained for the application;
  - (iv) any properly made submission for the application;
  - (v) the views expressed at a conference held in relation to the application;
  - (vi) the status of the application under the petroleum legislation for each relevant petroleum authority for the application.

#### **‘98 Conditions that may and must be imposed**

- ‘(1) The administering authority may impose the conditions on the environmental authority (petroleum activities) it considers are necessary or desirable.
- ‘(2) The conditions must include any condition the administering authority is required to impose under an EPP requirement.
- ‘(3) Without limiting subsections (1) and (2), the conditions may—
  - (a) require the environmental authority holder to do all or any of the following—
    - (i) install and operate stated plant or equipment in a stated way within a stated period;



- (ii) take stated measures to minimise the likelihood of environmental harm being caused;
  - (iii) carry out and report on a stated monitoring program;
  - (iv) prepare, and comply with, an environmental management program;
  - (v) give relevant information reasonably required by the administering authority for the administration or enforcement of this Act;
  - (vi) carry out or report about stated rehabilitation or remediation work relating to a relevant petroleum activity; or
- (b) prohibit the holder from changing, replacing or operating any plant or equipment installed at the relevant place for the environmental authority if the change, replacement or operation increases, or is likely to substantially increase, the risk of environmental harm; or
- (c) provide that the environmental authority ceases, or ceases to have effect—
- (i) on a stated day; or
  - (ii) when a stated period ends; or
  - (iii) on the happening of a stated event; or
  - (iv) if a stated event has not happened on or before a stated day.

*Example of a stated event—*

the granting of a relevant petroleum authority for the environmental authority

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

*Example for subsection (4)—*

A condition may—

- 1 be about rehabilitation of the land to which the environmental authority relates after the authority has ended; or
  - 2 require a site management plan for the land.
- ‘(5) Despite subsections (1) to (4), if a relevant petroleum authority for the environmental authority is, or is included in, a significant project—
- (a) any conditions for the environmental authority stated in the Coordinator-General’s report for the project (the *Coordinator-General’s conditions*) must be imposed on the environmental authority; and
  - (b) any other condition imposed on the environmental authority must not be inconsistent with the Coordinator-General’s conditions.

## ‘99 **Steps after granting application and the giving of financial assurance**

- ‘(1) If the administering authority decides to grant the application, it must take the steps mentioned in subsection (3)—
- (a) if, under a regulation, the application fee, or part of the fee, is required to accompany the application—within 8 business days after the later of the following—
    - (i) the day the decision is made;
    - (ii) payment of the application fee or the part of the fee; or
  - (b) otherwise—within 8 business days after the decision is made.
- ‘(2) However, if, under section 145O,<sup>18</sup> financial assurance has been required for the proposed environmental authority (petroleum activities), the steps need not be taken until the requirement has been complied with.

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18 Section 145O (Financial assurance may be required before authority is issued or transferred)

‘(3) For subsection (1), the steps are—

- (a) issue the environmental authority in the approved form; and
- (b) insert it in the appropriate register; and
- (c) give the applicant a copy of the authority.<sup>19</sup>

#### **‘100 Information notice about particular decisions**

‘The administering authority must, within 8 business days after making a decision to do any of the following, give the applicant an information notice about the decision—

- (a) refuse the application;
- (b) impose a condition on the environmental authority (petroleum activities), other than a condition that is the same, or is to the same effect, as a condition agreed to or requested by the applicant.

### **‘Division 4 Level 1 petroleum activities**

#### **‘101 Operation of div 4**

‘This division provides the process to obtain, by application, an environmental authority (petroleum activities) for a level 1 petroleum activity.<sup>20</sup>

#### **‘102 Requirements for application**

‘The application must—

- (a) be made to the administering authority in the approved form; and
- (b) describe—

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<sup>19</sup> See however section 145V (Restrictions on authority or transfer taking effect).

<sup>20</sup> See also section 145V (Restrictions on authority or transfer taking effect).

- (i) each relevant petroleum authority for the application; and
- (ii) all relevant petroleum activities for the application; and
- (c) be supported by enough information to allow the authority to decide the application, including, for example—
  - (i) relevant information about the likely risks to the environment; and
  - (ii) details of wastes to be generated; and
  - (iii) any waste minimisation strategy; and
- (d) be accompanied by—
  - (i) an environmental management plan that complies with section 103(2); and
  - (ii) the fee prescribed under a regulation.

### **‘103 Environmental management plan**

- ‘(1) The purpose of an environmental management plan is to propose environmental protection commitments to help the administering authority decide the conditions of the environmental authority (petroleum activities).
- ‘(2) An environmental management plan must—
  - (a) be in the approved form; and
  - (b) describe each of the following—
    - (i) each relevant petroleum authority for the environmental authority;
    - (ii) all relevant petroleum activities the subject of the application;
    - (iii) the land on which the activities are to be carried out;
    - (iv) the environmental values likely to be affected by the activities;

- (v) the potential adverse and beneficial impacts of the activities on the environmental values; and
- (c) state the environmental protection commitments the applicant proposes for the activities to protect or enhance the environmental values under best practice environmental management; and
- (d) contain enough other information to allow the administering authority to decide the application and conditions to be imposed on the environmental authority (petroleum activities); and
- (e) address any other matter prescribed under an environmental protection policy or regulation.

#### **‘104 EIS may be required**

- ‘(1) The administering authority may, within the latest of the following periods to end, decide whether an EIS is required for the application—
  - (a) 10 business days after it receives the application;
  - (b) if the administering authority, within the 10 business days, gives the applicant written notice that it has fixed a longer period—the longer period.
- ‘(2) However, despite any decision by the administering authority, the Minister may, at any time before the application is decided, decide—
  - (a) whether there is to be an EIS requirement for the application; and
  - (b) at what stage, or step within a stage, under this division, the processing of the application must start or resume.
- ‘(3) The administering authority and the Minister must, in making a decision under this section, consider the standard criteria.
- ‘(4) The administering authority must, within 10 business days after a decision is made under this section, give the applicant written notice of the decision.

- ‘(5) Despite subsections (1) and (2), an EIS must not be required for the application if a relevant petroleum authority for the application is, or is included in, a significant project.<sup>21</sup>
- ‘(6) Also, a decision under subsection (1) or (2) ceases to have effect if a relevant petroleum authority for the application is, or is included in, a significant project.

#### **‘105 Public access to application**

‘The administering authority must, from the application date to the review date—

- (a) keep the application open for inspection by members of the public at the authority’s head office and the other places the chief executive considers appropriate; and
- (b) permit a person to take extracts from the application or, on payment of the appropriate fee to the authority, give the person a copy of the application, or part of the application.

#### **‘106 Public notice of application**

- ‘(1) The applicant must, within 2 business days after the application date publish a notice about the application (the *application notice*) in a newspaper circulating generally in the area where the relevant petroleum activities are proposed to be carried out.
- ‘(2) Subsection (1) is subject to section 109.

#### **‘107 Required contents of application notice**

- ‘(1) The application notice must be in the approved form and state each of the following—
  - (a) that anyone may make a submission to the administering authority about the application;

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<sup>21</sup> For EISs for significant projects, see the State Development Act, section 28 (Application of divs 3–6) and part 4, division 3 (EIS process).

- (b) the period (the *submission period*) during which the submission may be made;
  - (c) how to make a properly made submission;
  - (d) another matter prescribed under a regulation.
- ‘(2) The submission period must not end before the later of the following—
- (a) a day or time fixed by the authority before the notice is published;
  - (b) 8 business days after the application notice is published under section 106.
- (3) This section is subject to section 109.

#### **‘108 Declaration of compliance**

- ‘(1) The applicant must, within 5 business days after the application date, give the administering authority a statutory declaration declaring whether or not the applicant has complied with the notice requirements under sections 106 and 107.
- ‘(2) A copy of the application notice must be attached to the declaration.
- ‘(3) The proponent is taken to have complied with the requirements if—
- (a) a declaration is given under this section; and
  - (b) the declaration states the proponent has complied with the requirements.

#### **‘109 Substantial compliance may be accepted**

- ‘(1) If the applicant has not complied with the notice requirements under section 106 or 107, the administering authority must decide whether to allow the application to proceed under this part as if the noncompliance had not happened.
- ‘(2) The authority may decide to allow the application to proceed only if it is satisfied there has been substantial compliance with the requirements.

- ‘(3) If the authority decides not to allow the application to proceed—
- (a) any steps purportedly taken to comply with sections 106 and 107 are of no effect; and
  - (b) the authority must, within 8 business days after the decision is made, give the applicant—
    - (i) a written notice fixing a new period for giving the application notice (the *new notice period*); and
    - (ii) if the submission period under section 107 has or will start before the new notice period—a new submission period for the application; and
    - (iii) an information notice about the decision not to allow the application to proceed and the decision to fix the new notice period.
- ‘(4) The new notice period applies despite section 107(2).

#### ‘110 Right to make submission

‘A person may, within the submission period, make a submission to the administering authority about the application.

#### ‘111 Acceptance of submission

- ‘(1) The administering authority must accept the submission if it—
- (a) is written; and
  - (b) is signed by or for each person (a *signatory*) who made the submission; and
  - (c) states the name and address of each signatory; and
  - (d) is made to the authority; and
  - (e) is received on or before the last day of the submission period.
- ‘(2) A submission that complies with subsection (1) is a *properly made submission*.



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

### **‘112 Deciding application**

‘The administering authority must, within the latest of the following periods to end, decide to grant or refuse the application—

- (a) 20 business days after the application date;
- (b) 20 business days after the authority receives the declaration of compliance under section 108;
- (c) 8 business days after the submission period ends;
- (d) if an EIS requirement has been made for the application or a relevant petroleum activity is, or is included in, a significant project—20 business days after the EIS process is completed.<sup>22</sup>

### **‘113 Criteria for decision**

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

- (a) must comply with any relevant EPP requirement; and
- (b) subject to paragraph (a), must consider each of the following—
  - (i) the standard criteria;
  - (ii) additional information given in relation to the application;
  - (iii) any suitability report obtained for the application;
  - (iv) any properly made submission for the application;
  - (v) the views expressed at a conference held in relation to the application;
  - (vi) the environmental management plan accompanying the application;

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<sup>22</sup> For the completion of the EIS process, see section 60 (When process is completed).

- (vii) the status of the application under the petroleum legislation for each relevant petroleum authority for the application;
- (viii) if an EIS requirement has been made for the application—the EIS.<sup>23</sup>

#### **‘114 Conditions that may and must be imposed**

- ‘(1) The administering authority may impose the conditions on the environmental authority (petroleum activities) it considers are necessary or desirable.
- ‘(2) The conditions must include any condition the administering authority is required to impose under an EPP requirement.
- ‘(3) Without limiting subsections (1) and (2), the conditions may—
  - (a) require the environmental authority holder to do all or any of the following—
    - (i) install and operate stated plant or equipment in a stated way within a stated period;
    - (ii) take stated measures to minimise the likelihood of environmental harm being caused;
    - (iii) carry out and report on a stated monitoring program;
    - (iv) prepare, and comply with, an environmental management program;
    - (v) give relevant information reasonably required by the administering authority for the administration or enforcement of this Act;
    - (vi) carry out or report about stated rehabilitation or remediation work relating to a relevant petroleum activity; or
  - (b) prohibit the holder from changing, replacing or operating any plant or equipment installed at the

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<sup>23</sup> See also section 145U (Grounds for refusing application for or to transfer non-code compliant authority).

relevant place for the environmental authority if the change, replacement or operation increases, or is likely to substantially increase, the risk of environmental harm; or

- (c) provide that the environmental authority ceases, or ceases to have effect—
- (i) on a stated day; or
  - (ii) when a stated period ends; or
  - (iii) on the happening of a stated event; or
  - (iv) if a stated event has not happened on or before a stated day.

*Example of a stated event—*

the granting of a relevant petroleum authority for the environmental authority

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

*Example for subsection (4)—*

A condition may—

- 1 be about rehabilitation of the land to which the environmental authority relates after the authority has ended; or
- 2 require a site management plan for the land.

- ‘(5) Despite subsections (1) to (4), if a relevant petroleum authority for the environmental authority is, or is included in, a significant project—
- (a) any conditions for the environmental authority stated in the Coordinator-General’s report for the project (the *Coordinator-General’s conditions*) must be imposed on the environmental authority; and
  - (b) any other condition imposed on the environmental authority must not be inconsistent with the Coordinator-General’s conditions.

### **‘115 Steps after granting application and the giving of financial assurance**

- ‘(1) If the administering authority decides to grant the application, it must take the steps mentioned in subsection (3)—
- (a) if, under a regulation, the application fee, or part of the fee, is required to accompany the application—within 8 business days after the later of the following—
    - (i) the day the decision is made;
    - (ii) payment of the application fee or the part of the fee; or
  - (b) otherwise—within 8 business days after the decision is made.
- ‘(2) However, if, under section 145O,<sup>24</sup> financial assurance has been required for the proposed environmental authority (petroleum activities), the steps need not be taken until the requirement has been complied with.
- ‘(3) For subsection (1), the steps are—
- (a) issue the environmental authority in the approved form; and
  - (b) insert it in the appropriate register; and
  - (c) give the applicant a copy of the authority.<sup>25</sup>

### **‘116 Information notice about particular decisions**

- ‘(1) The administering authority must, within 8 business days after making a decision to do any of the following, give the applicant and any submitter for the application an information notice about the decision—
- (a) refuse the application;
  - (b) impose a condition on the environmental authority (petroleum activities), other than a condition that is the

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24 Section 145O (Financial assurance may be required before authority is issued or transferred)

25 See however section 145V (Restrictions on authority or transfer taking effect).

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

- (2) If the administering authority decides to grant the environmental authority (petroleum activities) it must, within 8 business days after the decision is made, give any submitter for the application an information notice about the decision.

## **‘Division 5                    Term of environmental authority (petroleum activities)**

### **‘117    Term**

‘An environmental authority (petroleum activities) continues in force unless it is cancelled, surrendered or suspended under this chapter.

## **‘Part 3                            Amending environmental authorities (petroleum activities) by application**

### **‘Division 1                    Making amendment application**

#### **‘118    Who may apply for amendment**

‘The holder of an environmental authority (petroleum activities) may, at any time, apply to the administering authority to amend the environmental authority (an *amendment application*).

*Examples of when the holder may wish to make an amendment application—*

- to change a relevant petroleum activity for the environmental authority from a level 1 petroleum activity to a level 2 petroleum activity

- to complement an application under the P&G Act, chapter 4, part 6,<sup>26</sup> to amend a relevant pipeline licence
- if a relevant petroleum authority is an authority to prospect and the holder has, under the P&G Act, chapter 2, part 2, division 2,<sup>27</sup> made an ATP-related application for a petroleum lease

### **‘119 Code compliance condition may be amended**

‘An amendment application for a code compliant authority may seek to amend the code compliance condition or to impose new conditions on the authority.

*Note—*

If the amendment is made, the authority will become a non-code compliant authority. See section 75.<sup>28</sup>

### **‘120 Requirements for amendment application**

‘An amendment application must be—

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

## **‘Division 2 Processing amendment application**

### **‘121 EIS may be required**

‘(1) The administering authority may, within the latest of the following periods to end, decide whether an EIS is required for an amendment application—

- (a) 10 business days after it receives the application;

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26 P&G Act, chapter 4, part 6 (Amending licence by application)

27 P&G Act, chapter 5, part 2, division 2 (Transition from authority to prospect to petroleum lease)

28 Section 75 (Types of environmental authority (petroleum activities))

- (b) if the administering authority, within the 10 business days, gives the applicant written notice that it has fixed a longer period—the longer period.
- ‘(2) However, despite any decision by the administering authority, the Minister may, at any time before the application is decided, decide—
  - (a) whether there is to be an EIS requirement for the application; and
  - (b) at what stage, or step within a stage, under this part the processing of the application must start or resume.
- ‘(3) The administering authority and the Minister must, in making a decision under this section, consider the standard criteria.
- ‘(4) The administering authority must, within 10 business days after a decision is made under this section, give the applicant written notice of the decision.
- ‘(5) Despite subsections (1) and (2), an EIS must not be required for the application if a relevant petroleum authority for the application is, or is included in, a significant project.<sup>29</sup>
- ‘(6) Also, a decision under subsection (1) or (2) ceases to have effect if a relevant petroleum authority for the application is, or is included in, a significant project.

## ‘122 Public notice may be required

- ‘(1) The administering authority may, within 5 business days after the application date for an amendment application, by written notice to the applicant, decide that sections 105 to 111<sup>30</sup> apply for the application (a *public notice requirement*).
- ‘(2) However, a public notice requirement must not be made unless the administering authority is satisfied there is likely to be a substantial increase in the risk of environmental harm under the amended environmental authority (petroleum activities) because of a substantial change in—

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<sup>29</sup> For EISs for significant projects, see the State Development Act, section 28 (Application of divs 3–6) and part 4, division 3 (EIS process).

<sup>30</sup> Sections 105 (Public access to application) to 111 (Acceptance of submission)

- (a) the quantity or quality of contaminant authorised to be released into the environment; or
  - (b) the results of the release of a quantity or quality of contaminant authorised to be released into the environment.
- ‘(3) Without limiting subsection (2)(a), each of the following is taken to be a substantial change—
- (a) an increase of 10% or more in the quantity of a contaminant to be released into the environment;
  - (b) if the amendment application is for an environmental authority (petroleum activities) for a petroleum project and the amendment is to add a level 1 petroleum activity to the authority.
- ‘(4) The notice must be accompanied by, or include, an information notice about the decision.

### ‘123 Public notice process

- ‘(1) If a public notice requirement is made for an amendment application, sections 105 to 111<sup>31</sup> apply for the application, with necessary changes, as if the application were an application for an environmental authority (petroleum activities) for a level 1 petroleum activity.
- ‘(2) However, for applying a section, the reference in the section to a number of business days after the application date is taken to be—
- (a) for section 106<sup>32</sup>—15 business days; or
  - (b) for section 108<sup>33</sup>—19 business days.
- ‘(3) To remove any doubt, it is declared that a submission made under section 110,<sup>34</sup> as applied under subsection (1)—

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31 Sections 105 (Public access to application) to 111 (Acceptance of submission)

32 Section 106 (Public notice of application)

33 Section 108 (Declaration of compliance)

34 Section 110 (Right to make submission)



- (a) may be made about an existing provision of the environmental authority only to the extent the provision is proposed to be amended under the application; and
- (b) can not be made about petroleum activities carried out under the authority before the deciding of the application.

#### **‘124 Deciding application**

- ‘(1) The administering authority must decide to grant or refuse an amendment application the latest of the following periods to end—
  - (a) 20 business days after the application date for the application;
  - (b) if a public notice requirement has been made for the application, the later of the following periods to end—
    - (i) 20 business days after the authority receives the declaration of compliance under section 108;
    - (ii) 8 business days after the submission period ends;
  - (c) if an EIS requirement has been made for the application or a relevant petroleum activity is, or is included in, a significant project—20 business days after the EIS process is completed.<sup>35</sup>
- ‘(2) The administering authority may decide to grant the application subject to the applicant’s written agreement to the administering authority amending the environmental authority (petroleum activities) in a stated way that it considers is necessary or desirable.

#### **‘125 Criteria for decision**

- ‘(1) The administering authority may grant an amendment application if it is satisfied the amendment is necessary or desirable.

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<sup>35</sup> For the completion of the EIS process, see section 60 (When process is completed).

- ‘(2) However, in deciding the application, the administering authority must consider any criteria that apply for deciding an application to obtain the environmental authority (petroleum activities).
- ‘(3) In considering whether the amendment is necessary or desirable, the administering authority may have regard to—
- (a) an existing provision of the environmental authority whether or not the provision is proposed to be amended under the application; and
  - (b) all or any of the petroleum activities carried out under the environmental authority before the deciding of the application.

### **‘Division 3                    Miscellaneous provisions**

#### **‘126    Steps after making decision**

‘If the administering authority decides to grant an amendment application, it must do each of the following within 8 business days after the decision is made—

- (a) amend the environmental authority (petroleum activities) to give effect to the amendment;
- (b) record particulars of the amendment in the appropriate register;
- (c) give the applicant a copy of the amended environmental authority.

#### **‘127    When amendment takes effect**

- ‘(1) An amendment made under section 126(a) takes effect on the latest of the following days—
- (a) the day of the amendment;
  - (b) a later day of effect stated in the amended environmental authority (petroleum activities);
  - (c) another day agreed to by the holder of the environmental authority;

- (d) if a public notice requirement has been made for the application and a properly made submission was made about the application—the day after the review date.
- ‘(2) For subsection (1)(b) the day may be stated by reference to the day a particular event happens, including, for example, a stated amendment of a relevant petroleum authority for the environmental authority.

### **‘128 Information notice about particular decisions**

- ‘(1) The administering authority must, within 8 business days after making 1 of the following decisions, give the applicant an information notice about the decision—
  - (a) a decision to refuse an amendment application;
  - (b) a decision under section 124(2)<sup>36</sup> to grant an amendment application subject to the applicant’s written agreement to the administering authority amending the environmental authority (petroleum activities) in a stated way.
- ‘(2) However, the information notice need not be given if the applicant has given the written agreement.
- ‘(3) If the administering authority has made a public notice requirement for an amendment application, it must, within 8 business days after deciding to grant the application, give any submitter for the application an information notice about the decision.

## **‘Part 4 Transfers**

### **‘129 Transfer only by approval**

- ‘(1) An environmental authority (petroleum activities) may be transferred only if—

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36 Section 124 (Deciding application)

- (a) an application for the transfer has been made under this part (a *transfer application*); and
  - (b) the administering authority has approved the transfer.<sup>37</sup>
- ‘(2) To remove any doubt, it is declared that a transfer application may be made, and a transfer may be approved, for a transfer from joint holders of an environmental authority (petroleum activities) under which 1 or more of the joint holders will continue to hold the environmental authority.

### ‘130 General requirements for transfer application

‘A transfer application must be—

- (a) made to the administering authority in the approved form; and
- (b) made by each of the following (the *applicants*)—
  - (i) the holder of the environmental authority (petroleum activities);
  - (ii) the proposed transferee; and
- (c) supported by enough information to allow the administering authority to decide the application; and
- (d) accompanied by the fee prescribed under a regulation.

### ‘131 Amendment application may accompany transfer application

- ‘(1) The applicants may, together with the transfer application, make an amendment application for the environmental authority (petroleum activities).

*Note—*

If the amendment is made and the conditions of the authority are amended or new conditions are imposed on it, the authority will become a non-code compliant authority. See section 75.<sup>38</sup>

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<sup>37</sup> See also section 145V (Restrictions on authority or transfer taking effect).

<sup>38</sup> Section 75 (Types of environmental authority (petroleum activities))

- ‘(2) Part 3 applies, with necessary changes, to the amendment application as if a reference to the environmental authority holder included a reference to the proposed transferee.
- ‘(3) However, the amendment application must not be granted before the transfer application is granted or if the transfer application is refused.

**‘132 Additional requirement for transfer application for code compliant authority if no amendment application made**

- ‘(1) This section applies if—
  - (a) the environmental authority (petroleum activities) is a code compliant authority; and
  - (b) the transfer application is not accompanied by an amendment application.
- ‘(2) The transfer application must also include a certification by the proposed transferee that the proposed transferee can, in carrying out the relevant petroleum activities for the environmental authority, comply with the code compliance condition.

*Note—*

A subsequent failure to comply with the code compliance condition may result in the commission of an offence or in action to amend, suspend or cancel the authority. See sections 93, 145E(2)(b), 145F(2)(a) and 480(4).<sup>39</sup>

**‘133 Audit statement may be required**

- ‘(1) The administering authority may, within 20 business days after a transfer application is made, require the applicants to give it an audit statement for the environmental authority (petroleum activities).
- ‘(2) The audit statement must—

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<sup>39</sup> Sections 93, (Code compliance condition), 145E (Other amendments), 145F (Conditions for cancellation or suspension) and 480 (False, misleading or incomplete documents)

- (a) be made by or for the environmental authority holder; and
- (b) state the extent to which activities carried out under each relevant petroleum authority for the environmental authority have complied with the conditions of the environmental authority.

### **‘134 Deciding application**

- ‘(1) The administering authority must, within 20 business days after the application date, consider each transfer application and decide to approve or refuse the transfer.
- ‘(2) The administering authority must, in making the decision, consider the status of any application under the petroleum legislation for the transfer to the proposed transferee of any relevant petroleum authority for the environmental authority.

### **‘135 Additional ground for refusal**

- ‘(1) The administering authority may refuse a transfer application if—
  - (a) the applicants did not, under section 131(1),<sup>40</sup> also apply to amend the relevant environmental authority (petroleum activities); and
  - (b) the administering authority is satisfied that, if the application were to be granted, a ground for amending the environmental authority under section 145E<sup>41</sup> would exist.
- ‘(2) Subsection (1) does not limit the grounds on which the application may be refused.

### **‘136 Steps after making decision**

- ‘(1) If the administering authority decides to approve a transfer, it must, within 8 business days after the decision is made—

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40 Section 131 (Amendment application may accompany transfer application)

41 Section 145E (Other amendments)

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- (a) amend the environmental authority (petroleum activities) to give effect to the transfer; and
  - (b) record particulars of the transfer in the appropriate register; and
  - (c) give the transferee a copy of the transferred environmental authority.
- ‘(2) However, if 1 of the following requirements has been made, subsection (1) does not apply until the requirement has been complied with—
- (a) a requirement under section 145O,<sup>42</sup> to give financial assurance for the transferred environmental authority;
  - (b) a requirement under section 145P<sup>43</sup> to change the financial assurance for the environmental authority.
- ‘(3) If the authority decides to refuse a transfer, it must, within 8 business days after the decision is made, give the applicants for the transfer an information notice about the decision.<sup>44</sup>

## ‘Part 5                      Surrenders

### ‘Division 1                General provisions for surrenders

#### ‘137    Surrender only by approval

- ‘(1) An environmental authority (petroleum activities) may be surrendered only if—
- (a) an application for the surrender has been made under division 2 (a *surrender application*); and

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<sup>42</sup> Section 145O (Financial assurance may be required before authority is issued or transferred)

<sup>43</sup> Section 145P (Power to require change to financial assurance)

<sup>44</sup> For when the transfer takes effect, see section 145V (Restrictions on authority or transfer taking effect).

- (b) the administering authority has approved the surrender.
- ‘(2) The holder of an environmental authority (petroleum activities) must make a surrender application if required under section 139.<sup>45</sup>
- ‘(3) The holder may make a surrender application at any other time.

### ‘138 Surrender may be partial

- ‘(1) The administering authority may approve a surrender application for a part of an environmental authority (petroleum activities).
- ‘(2) However, the administering authority may refuse the application if—
  - (a) the applicant has not made an amendment application for the part of the environmental authority not sought to be surrendered and the administering authority considers that it is appropriate to amend the environmental authority to reflect the proposed partial surrender; or
  - (b) the environmental authority is for a petroleum project and, after the proposed partial surrender, the environmental authority would not apply to all remaining areas that form the project.
- ‘(3) Subsection (2) does not limit sections 145A and 145B.<sup>46</sup>

### ‘139 When surrender application required

- ‘(1) The holder of an environmental authority (petroleum activities) must make a surrender application for the environmental authority—
  - (a) within 30 days after—

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45 Section 139 (When surrender application required)

46 Sections 145A (Deciding application) and 145B (Criteria for decision)



- (i) the cancellation of a relevant petroleum authority for the environmental authority; or
  - (ii) a reduction in the area of a relevant petroleum authority for the environmental authority under a requirement of noncompliance action taken under the petroleum legislation; or
- (b) within 90 days before any of the following is to happen—
- (i) a relevant petroleum authority for the environmental authority is, according to its provisions, to end other than by cancellation;
  - (ii) a relinquishment of part of the area of a relevant petroleum authority for the environmental authority other than under a requirement of noncompliance action taken under the *Petroleum Act 1923* or the P&G Act;
  - (iii) a surrender of part of the area of a relevant petroleum authority for the environmental authority.
- ‘(2) However, subsection (1)(b) does not apply if, before the 90 days—
- (a) the petroleum authority is, under the petroleum legislation renewed or continued in force; or
  - (b) a replacement environmental authority (petroleum activities) for the environmental authority is issued to the holder.
- ‘(3) A surrender application under subsection (1)(a) must be for the environmental authority to the extent it relates to the relevant petroleum authority cancelled or affected by a relinquishment or partial surrender.
- ‘(4) Otherwise, the surrender application must be for all of the environmental authority.

**‘140 Notice by administering authority to make surrender application**

- ‘(1) This section applies if the holder of an environmental authority (petroleum activities) has not made a surrender application as required under section 139.
- ‘(2) The administering authority may, by written notice (a *surrender notice*), require the holder to make a surrender application for the environmental authority within a stated a stated period of at least 10 business days.
- ‘(3) The surrender notice must be accompanied by, or include, an information notice about the administering authority’s decisions to make the requirement and to fix the stated period.

**‘141 Failure to comply with surrender notice**

‘A person to whom a surrender notice has been given must comply with the notice unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

**‘Division 2 Making surrender application**

**‘142 Requirements for surrender application**

- ‘(1) A surrender application must be—
  - (a) in the approved form; and
  - (b) supported by enough information to allow the administering authority to decide the application; and
  - (c) accompanied by—
    - (i) a final rehabilitation report for the environmental authority (petroleum activities), that complies with section 143; and
    - (ii) an audit statement for the environmental authority; and
    - (iii) the fee prescribed under a regulation.

- ‘(2) The audit statement must—
- (a) be made by or for the environmental authority holder; and
  - (b) state the extent to which—
    - (i) activities carried out under the environmental authority have complied with its conditions; and
    - (ii) the final rehabilitation report is accurate.

### **‘Division 3                      Final rehabilitation reports**

#### **‘143      Content requirements for final rehabilitation report**

- ‘A final rehabilitation report must—
- (a) be in the approved form; and
  - (b) state the extent to which activities carried out under each relevant petroleum authority for the environmental authority to which the surrender application relates have been consistent with the environmental protection commitments under any relevant environmental management plan; and
  - (c) include enough information to allow the administering authority to decide whether—
    - (i) the conditions of the environmental authority (petroleum activities) have been complied with; and
    - (ii) the land on which each relevant petroleum activity has been carried out has been satisfactorily rehabilitated; and
  - (d) describe any ongoing environmental management needs for the land; and
  - (e) include another matter prescribed under a regulation.

#### **‘144 Amending report**

- ‘(1) This section applies if a person has submitted a final rehabilitation report (the *original report*).
- ‘(2) The person may amend the original report at any time before the administering authority decides the surrender application.
- ‘(3) However, an amendment may be made only by giving the authority written notice stating the amendment (an *FRR amendment notice*).
- ‘(4) An FRR amendment notice must be accompanied by the fee prescribed under a regulation.
- ‘(5) The submitted final rehabilitation report is taken to be the original report, as amended from time to time by any FRR amendment notice given for the original report.

#### **‘145 FRR assessment report may be given**

‘The administering authority may give the person who submitted a final rehabilitation report an assessment report (an *FRR assessment report*) about the final rehabilitation report.

### **‘Division 4 Processing surrender applications**

#### **‘145A Deciding application**

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

#### **‘145B Criteria for decision**

- ‘(1) In deciding a surrender application, the administering authority must—
  - (a) comply with any relevant EPP requirement; and
  - (b) subject to paragraph (a), consider each of the following—

- (i) the standard criteria;
  - (ii) the audit statement and final rehabilitation report that accompanied the application;
  - (iii) any relevant FRR assessment report;
  - (iv) another matter prescribed under an environmental protection policy or regulation.
- ‘(2) The administering authority may grant the application only if—
- (a) it is satisfied the conditions of the environmental authority (petroleum activities) have been complied with; or
  - (b) it is satisfied the land to which the surrender application relates has been satisfactorily rehabilitated; or
  - (c) it has approved an environmental management program and it is satisfied the land will be satisfactorily rehabilitated under the program; or
  - (d) a suitability statement has been given for the land and—
    - (i) the land has been removed from the environmental management register; or
    - (ii) a site management plan has been approved for the land.

### **‘145C Steps after making decision**

‘The administering authority must, within 10 business days after deciding a surrender application—

- (a) if the decision is to approve the surrender—
  - (i) record particulars of the surrender in the appropriate register; and
  - (ii) give the applicant written notice of the decision; or
- (b) if the decision is to refuse the surrender—give the applicant an information notice about the decision.

**‘Part 6**                      **Amendment, cancellation or  
   suspension by administering  
   authority**

**‘Division 1**                **Conditions for amendment,  
   cancellation or suspension**

**‘Subdivision 1**        **Amendments**

**‘145D Corrections**

‘The administering authority may amend an environmental authority (petroleum activities) to correct a clerical or formal error (a *correction*) if—

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

**‘145E Other amendments**

‘(1) The administering authority may amend an environmental authority (petroleum activities) at any time if—

- (a) it considers the amendment is necessary or desirable because of a matter mentioned in subsection (2); and
- (b) the procedure under division 2 has been followed or the holder has agreed in writing to the amendment.

‘(2) For subsection (1)(a), the matter is any of the following—

- (a) a contravention of this Act by the holder;
- (b) the environmental authority was issued because of a materially false or misleading certificate, declaration or representation, made either orally or in writing;
- (c) the administering authority has, under part 7, directed or required the holder to change or replenish financial

- assurance for the environmental authority and the holder has not complied with the direction or requirement;
- (d) the environmental authority was issued on the basis of a miscalculation of—
    - (i) the environmental values affected or likely to be affected, by a relevant petroleum activity for the environmental authority; or
    - (ii) the quantity or quality of contaminant authorised to be released into the environment; or
    - (iii) the effects of the release of a quantity or quality of contaminant authorised to be released into the environment;
  - (e) a change in the way in which, or the place where, contaminants are, or are likely to be, released into the environment;
  - (f) the approval of an environmental protection policy or the approval of the amendment of an environmental protection policy;
  - (g) an environmental audit or report, or an audit statement given under this chapter;
  - (h) an environmental audit or report given under chapter 7;<sup>47</sup>
  - (i) a final rehabilitation report;
  - (j) an annual return required under this Act;
  - (k) a significant change in the way in which, or the extent to which, a relevant petroleum activity is being carried out;
  - (l) the amendment is necessary to prevent environmental harm not already authorised under the environmental authority;
  - (m) an amendment is proposed under an amendment application;

- (n) a report made by or for, or approved by, a recognised entity if the report is relevant to the environmental authority or an activity carried out under it;
  - (o) another circumstance prescribed under a regulation.
- ‘(3) Subsection (2)(k) applies even if an environmental management plan mentions or provides for the change.

## **‘Subdivision 2 Cancellation or suspension**

### **‘145F Conditions for cancellation or suspension**

- ‘(1) The administering authority may cancel or suspend an environmental authority (petroleum activities) if—
- (a) it issues a replacement environmental authority for the environmental authority; or
  - (b) an event mentioned in subsection (2) has happened and the procedure under division 2 has been followed.
- ‘(2) For subsection (1)(b), the event is any of the following—
- (a) the environmental authority was issued or has been transferred because of a materially false or misleading certificate, declaration or representation, made either orally or in writing;
  - (b) the administering authority has, under part 7, directed or required the holder to change or replenish financial assurance for the environmental authority and the holder has not complied with the direction or requirement;
  - (c) the environmental authority holder is, after the issue of the environmental authority, convicted of an environmental offence;
  - (d) after the environmental authority has taken effect<sup>48</sup>—

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48 For when the environmental authority takes effect, see section 145V (Restrictions on authority or transfer taking effect).



- (i) the environmental authority holder no longer holds any relevant petroleum authority for the environmental authority; or
- (ii) a person, other than the environmental authority holder, becomes a holder of a relevant petroleum authority for the environmental authority;
- (e) the holder has been given an annual notice, audit notice or surrender notice and the notice has not been complied with.

## **‘Division 2                    Procedure for amendment without agreement or for cancellation or suspension**

### **‘145G Application of div 2**

‘This division applies if the administering authority proposes to—

- (a) amend an environmental authority (petroleum activities), other than—
  - (i) to make a correction; or
  - (ii) with the written agreement of the environmental authority holder; or
- (b) cancel or suspend an environmental authority (petroleum activities).

### **‘145H Notice of proposed action**

- ‘(1) The administering authority must give the environmental authority holder a written notice stating each of the following—
  - (a) the action (the *proposed action*) the administering authority proposes taking under this division;
  - (b) the grounds for the proposed action;

- (c) the facts and circumstances that are the basis for the grounds;
  - (d) if the proposed action is to amend the environmental authority—the proposed amendment;
  - (e) if the proposed action is to suspend the environmental authority—the proposed suspension period;
  - (f) that the holder may make, within a stated period, written representations to show why the proposed action should not be taken.
- ‘(2) The stated period must end at least 20 business days after the holder is given the proposed action notice.
- ‘(3) For subsection (1)(e), the proposed suspension period may be fixed by reference to a stated event.

*Example for subsection (3)—*

If a ground on which the proposed action is to be taken is that financial assurance has not been changed or replenished as directed or required under part 7, the proposed suspension period may be stated as the period ending when the financial assurance is changed or replenished as required.

### **‘145I Considering representations**

‘The administering authority must consider any written representation made within the period stated in the notice under section 145H by the environmental authority holder.

### **‘145J Decision on proposed action**

- ‘(1) If, after complying with section 145I, the administering authority still believes a ground exists to take the proposed action, it may—
- (a) if the proposed action was to amend the environmental authority in a stated way—make the amendment; or
  - (b) if the proposed action was to suspend the environmental authority for a stated period—suspend the environmental authority for no longer than the proposed suspension period; or

- (c) if the proposed action was to cancel the environmental authority—either cancel the environmental authority or suspend it for a fixed period.
- ‘(2) The decision under subsection (1) is the ***proposed action decision***.
- ‘(3) If the administering authority at any time decides not to take the proposed action, it must, as soon as practicable, give the holder written notice of the decision.

### ‘145K Notice of proposed action decision

- ‘(1) The administering authority must, within 10 business days after the proposed action decision is made—
  - (a) for a decision to amend a code compliant authority—give its holder a written notice stating the decision and the reasons for it; or
  - (b) for a decision to amend a non-code compliant authority—give its holder an information notice about the decision.<sup>49</sup>
- ‘(2) The decision takes effect on the later of the following—
  - (a) the day the holder is given the notice;
  - (b) a later day of effect stated in the notice.
- ‘(3) However, if the decision was to cancel or suspend because of the conviction of the holder for an offence, the cancellation or suspension—
  - (a) does not take effect until—
    - (i) the period to appeal against the conviction ends; and
    - (ii) if the appeal is made against the conviction—the appeal is finally decided or is otherwise ended; and
  - (b) has no effect if the conviction is quashed on appeal.

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<sup>49</sup> See part 2, division 3 (Level 2 petroleum activities), subdivisions 1 (Code compliant authorities) and 2 (Non-code compliant authorities) and part 2, division 4 (Level 1 petroleum activities).

## **‘Division 3                    Steps after making decision**

### **‘145L Steps for corrections**

‘If the administering authority decides to amend an environmental authority (petroleum activities) to make a correction, it must, within 10 business days after giving notice of the correction under section 145D(b)<sup>50</sup>—

- (a) amend the environmental authority to give effect to the amendment; and
- (b) record particulars of the amendment in the appropriate register.

### **‘145M Steps for amendment by agreement**

‘If, under division 1, subdivision 1, the administering authority decides to amend an environmental authority (petroleum activities) with its holder’s agreement, it must, within 10 business days—

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

### **‘145N Steps for amendment without agreement or for cancellation or suspension**

- ‘(1) This section applies if the proposed action decision is to take action and the decision has taken effect.
- ‘(2) The administering authority must, as soon as practicable—
  - (a) take the action; and

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50 Section 145D (Corrections)

- (b) record particulars of the action in the appropriate register.
- ‘(3) If the action is suspension of the environmental authority (petroleum activities)—
  - (a) the particulars must state when the suspension period starts and ends; and
  - (b) the suspension ends when the suspension period is stated to end.
- ‘(4) If the action is to amend the environmental authority, the administering authority must also give its holder a copy of the amended environmental authority as soon as practicable.

## ‘Part 7                      **Financial assurance**

### ‘1450 **Financial assurance may be required before authority is issued or transferred**

- ‘(1) This section applies if, under this chapter, the administering authority decides to grant an application for, or to transfer, an environmental authority (petroleum activities).
- ‘(2) The administering authority may, within 8 business days after the day the decision was made, require the giving of financial assurance in a stated form or amount as security for—
  - (a) compliance with the environmental authority or the transferred environmental authority; and
  - (b) costs or expenses, or likely costs or expenses, mentioned in section 367(1).<sup>51</sup>
- ‘(3) However, the requirement may be made only if the administering authority is satisfied the assurance is justified having regard to—

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51 Section 367 (Claims on financial assurances)

- (a) the degree of risk of environmental harm being caused, or that might reasonably be expected to be caused, by relevant petroleum activities for the environmental authority; and
  - (b) the likelihood of action being required to rehabilitate or restore and protect the environment because of environmental harm being caused by the activities; and
  - (c) the applicant's environmental record.
- '(4) The requirement must be included in, or be accompanied by, an information notice about the decision to make the requirement.
- '(5) The requirement may require the financial assurance to remain in force until the administering authority is satisfied no claim is likely to be made on the assurance.
- '(6) The administering authority may refuse to issue or transfer the environmental authority (petroleum activities) until the requirement is complied with.
- '(7) In this section—
- applicant*, for an application to transfer an environmental authority (petroleum activities), means the proposed transferee under the application.

#### **'145P Power to require change to financial assurance**

- '(1) The administering authority may, by complying with subsections (3) to (5), require the holder of an environmental authority (petroleum activities) to change the financial assurance given for the environmental authority.
- '(2) The requirement may be made at any time.
- '(3) The administering authority must give the holder a notice—
- (a) stating the proposed change; and
  - (b) inviting the holder to make, within a stated period, submissions about the proposed change.

- ‘(4) The administering authority must, before deciding to make the requirement, consider any written submissions by the holder given within the stated period.
- ‘(5) The stated period must end at least 20 business days after the holder is given the notice.
- ‘(6) The requirement does not take effect until the holder is given an information notice about the decision or, if the notice states a later day of effect, on that later day.
- ‘(7) In this section—
  - change*, financial assurance, includes to increase its amount or replace it.
  - financial assurance*, given, includes financial assurance changed because of a requirement under subsection (1).

#### ‘145Q Replenishment of financial assurance

- ‘(1) This section applies, if—
  - (a) under section 367,<sup>52</sup> all or part of the financial assurance for an environmental authority (petroleum activities) has been realised; and
  - (b) the environmental authority is still in force.
- ‘(2) The administering authority must give the permit holder a notice—
  - (a) stating how much of the financial assurance has been used; and
  - (b) directing the holder to, within 20 business days after the giving of the notice, replenish the financial assurance so that its amount and form complies with the financial assurance as it was required under section 145O, as changed from time to time under section 145P.
- ‘(3) It is a condition of the environmental authority that the holder must comply with the direction.

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52 Section 367 (Claims on financial assurances)

## **‘Part 8                      Principal holders**

### **‘145R Application of pt 8**

‘This part applies if 2 or more persons jointly hold an environmental authority (petroleum activities).

### **‘145S Appointment of principal holder**

- ‘(1) A person is taken to have been appointed as the principal holder of the environmental authority if—
- (a) immediately before the issue of the environmental authority, the person held appointment under section 87(1)<sup>53</sup> as the principal applicant for the application for the environmental authority; and
  - (b) the person’s appointment has not been cancelled under that section.
- ‘(2) The holders of the environmental authority may, by a signed notice from all of them to the administering authority—
- (a) appoint 1 of them as the principal holder of the environmental authority; or
  - (b) cancel the appointment of a principal holder.

### **‘145T Effect of appointment**

‘If a holder of the environmental authority holds appointment as its principal holder—

- (a) the principal holder may, for all holders of the environmental authority, give the administering authority a notice or other document relating to the environmental authority; and
- (b) the administering authority may—

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53 Section 87 (Appointment of principal applicant)



- (i) give a notice or other document relating to the environmental authority to all the holders by giving it to the principal holder; or
- (ii) make a requirement under this Act relating to the environmental authority of all the holders by making the requirement of the principal holder.

## **‘Part 9                      Miscellaneous provisions**

### **‘145U Grounds for refusing application for or to transfer non-code compliant authority**

- ‘(1) The administering authority may refuse an application for, or to transfer, a non-code compliant authority if—
  - (a) the administering authority is satisfied the proposed holder is not a suitable person to hold an environmental authority (petroleum activities); or
  - (b) a disqualifying event has happened in relation to the proposed holder or another person of whom the proposed holder is a partner and the partnership is relevant to the non-code compliant authority; or
  - (c) if the proposed holder is a corporation, a disqualifying event has happened in relation to—
    - (i) any of its executive officers; or
    - (ii) another corporation of which any of its executive officers is, or has been, an executive officer.
- ‘(2) In deciding whether a proposed holder is suitable person to hold an environmental authority (petroleum activities), the administering authority must consider all relevant matters, including, for example—
  - (a) the proposed holder’s environmental record; and
  - (b) the proposed holder’s ability to comply with any conditions or proposed conditions of the environmental authority or proposed environmental authority.

### **‘145V Restrictions on authority or transfer taking effect**

- ‘(1) This section applies if an environmental authority (petroleum activities) is, or must be—
- (a) issued under this chapter; or
  - (b) issued or amended to give effect to a transfer under this chapter.
- ‘(2) If the environmental authority states a day or an event for the authority or transfer to take effect, the authority or transfer takes effect on the stated day or when the stated event happens.
- ‘(3) If no day or event is stated, the environmental authority or transfer takes effect when the later of the following happens—
- (a) the granting, under the petroleum legislation, of each relevant petroleum authority;
  - (b) each environmental authority holder has become a holder of a relevant petroleum authority for the environmental authority;
  - (c) if a person, other than an environmental authority holder, is a holder of any relevant petroleum authority for the environmental authority—the person ceases to be a holder of the petroleum authority;
  - (d) if the authority was issued under part 2, division 4,<sup>54</sup> and a properly made submission was made the application for the authority—the review date.’.

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

Section 148—

*insert—*

- ‘(2) Each environmental authority (mining activities) is either a code compliant authority or a non-code compliant authority.

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54 Part 2, division 4 (Level 1 petroleum activities)

- ‘(3) A **code compliant authority** is an environmental authority (mining activities)—
- (a) that, under section 164, is taken to have been issued; or
  - (b) that is issued under section 167 in the following circumstances—
    - (i) all relevant standard environmental conditions for the authority are conditions of the authority;
    - (ii) they are the only conditions of the authority.<sup>55</sup>
- ‘(4) However, a code compliant authority ceases to be a code compliant authority if, under part 8, 9 or 12,<sup>56</sup> its conditions are amended or new conditions are imposed on it.
- ‘(5) A **non-code compliant authority** is any environmental authority (mining activities) other than a code compliant authority.’

**34 Amendment of s 150 (What are the *application documents*)**

- (1) Section 150(c), ‘environmental management document’—  
*omit, insert—*  
‘EM plan’.
- (2) Section 150(d), ‘or EMOS assessment report’—  
*omit.*

**35 Replacement of ch 5, part 1, div 3 (Standard mining activities)**

Chapter 5, part 1, division 3—  
*omit, insert—*

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55 Sections 164 (Automatic issuing of code compliant authority if no relevant mining claim or mining lease) and 167 (Modified application of pt 6, divs 6 to 8)  
See also section 603B(2) (Automatic conversion for particular applications).

56 Part 8 (Amendment of authorities by application), 9 (Transfer of authorities) or 12 (Amendment, cancellation or suspension by administering authority)  
See also section 165 (Conditions of code compliant authority).

**‘151    What is a level 1 mining project and a level 2 mining project**

- ‘(1) A **level 1 mining project** is a mining project authorised under an environmental authority (mining activities) if—
- (a) any of the mining activities that form the project do not comply with the criteria prescribed under a regulation for that type of environmental authority; or
  - (b) any relevant mining tenement for the environmental authority is, or is included in, a significant project.
- ‘(2) A **level 2 mining project** is—
- (a) any mining activity authorised under an environmental authority (prospecting); or
  - (b) a mining project authorised under an environmental authority (mining activities) if—
    - (i) all mining activities that form the project comply with the criteria prescribed under a regulation for that type of environmental authority; and
    - (ii) no relevant mining tenement for the environmental authority is, or is included in, a significant project.’

**36    Omission of ch 5, pt 2, div 1 (Introduction)**

Chapter 5, part 2, division 1—

*omit.*

**37    Renumbering of ch 5, pt 2, div 2 (Applications)**

Chapter 5, part 2, division 2—

*renumber* as chapter 5, part 2, division 1.

**38    Amendment of s 154 (General requirements for application)**

- (1) Section 154(1)(b) and (c)—

*omit, insert—*

- ‘(b) state whether the application is for a code compliant or non-code compliant authority; and
- (c) if the application is for a code compliant authority—
  - (i) state the type of the proposed environmental authority (mining activities); and
  - (ii) certify that—
    - (A) all mining activities proposed to be carried out under the environmental authority comply with the criteria prescribed under section 151<sup>57</sup> for that type of environmental authority to be a code compliant authority; and
    - (B) the applicant can, in carrying out the mining activities, comply with the relevant standard environmental conditions for the code compliant authority.

*Note—*

A subsequent failure to comply with any of the standard environmental conditions may result in the commission of an offence or in action to amend, suspend or cancel the environmental authority. See sections 165, 292(2)(a), 293(2)(a) and 480(4).<sup>58\*</sup>

- (2) Section 154(2) to (5)—

*omit, insert—*

- ‘(2) If the application is for a non-code compliant authority, the application must be supported by enough information to allow the administering authority to decide the application.<sup>59</sup>
- ‘(3) The requirements under this section are, to the extent to they are relevant, the ***application requirements*** for the application.

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57 Section 151 (What is a *level 1 mining project* and a *level 2 mining project*)

58 Sections 165 (Conditions of code of compliant authority), 292 (Other amendments), 293 (Conditions for cancellation or suspension) and 480 (False, misleading or incomplete documents)

59 For when the other information must be given, see sections 187 and 201 (Environmental management plan required).

- ‘(4) If the application is for a non-code compliant authority and the application complies with subsection (1), it is a **code compliant application**.
- ‘(5) A **non-code compliant application** is any application for an environmental authority (mining activities) that is not a code compliant application.’.

**39 Amendment of s 155 (Single application required for mining project)**

- (1) Section 155(3)(b)(ii)—  
*omit, insert—*  
‘(ii) whether each stated type is proposed to be a code compliant or non-code compliant authority.’.
- (2) Section 155(4)—  
*omit.*
- (3) Section 155(5) to (7)—  
*renumber* as section 155(4) to (6).

**40 Replacement of ch 5, pt 2, div 3 (Assessment level decision for certain applications)**

Chapter 5, part 2, division 3—

*omit, insert—*

**‘Division 2 EIS decision for particular non-code compliant applications**

**‘161 Application of div 2**

‘This division applies for a non-code compliant application if—

- (a) it is for an environmental authority (mining activities) for a level 1 mining project; and
- (b) no relevant mining tenement for the application is, or is included in, a significant project.

## **‘162 Decision about EIS requirement**

- ‘(1) The administering authority must, within the required period, decide whether an EIS is required for the application.
- ‘(2) The authority must, in making the decision, consider the standard criteria.
- ‘(3) If the authority does not make the decision within the required period, it is taken, at the end of the period, to have decided that no EIS is required for the application.
- ‘(4) In this section—  
*required period* means the later of the following periods to end—
  - (a) 10 business days after the administering authority receives the application;
  - (b) if the administering authority, within the 10 business days, gives the applicant a written notice that the EPA Minister has fixed a longer period—the longer period.

## **‘163 Minister’s power to overturn decision about EIS requirement**

- ‘(1) This section applies despite any decision by the administering authority under section 162.
- ‘(2) The EPA Minister may, at any time before an environmental authority (mining activities) is issued for the application, decide whether an EIS is required for the application.
- ‘(3) The Minister must, in making the decision, consider the standard criteria.’.

## **41 Replacement of ch 5, pt 3 (Processing environmental authority (prospecting) applications)**

Chapter 5, part 3—

*omit, insert—*

## **‘Part 3                      Processing of applications for level 2 mining projects**

### **‘Division 1                Code compliant applications**

#### **‘Subdivision 1        No relevant mining claim or mining lease**

#### **‘164    Automatic issuing of code compliant authority if no relevant mining claim or mining lease**

‘If—

- (a) no relevant mining tenement for a code compliant application is a mining claim or mining lease; and
- (b) section 155<sup>60</sup> does not apply to the applicant, or if it does apply to the applicant, section 155(2) and (3) have been complied with;

the code compliant authority applied for is taken to have been issued immediately after the application is made.<sup>61</sup>

#### **‘165    Conditions of code compliant authority**

- ‘(1) The relevant standard environmental conditions for the code compliant authority are taken to be conditions of the authority.<sup>62</sup>
- ‘(2) While the authority continues to be a code compliant authority, the relevant standard environmental conditions are the only conditions of the authority.<sup>63</sup>

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60 Section 155 (Single application required for mining project)

61 See however section 303 (Restrictions on environmental authority or transfer taking effect).

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

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



## **‘Subdivision 2 Process if there is a relevant mining claim or mining lease**

### **‘166 Application of sdiv 2**

‘This subdivision applies to a code compliant application if any relevant mining tenement is a mining claim or mining lease.

### **‘167 Modified application of pt 6, divs 6 to 8**

- ‘(1) Part 6, divisions 6 to 8 apply—
  - (a) as if the application were an application for a level 1 mining project; and
  - (b) with other necessary changes.
- ‘(2) For applying the divisions, the draft environmental authority for the application is taken to be all relevant standard environmental conditions for the proposed environmental authority (mining activities).
- ‘(3) For applying section 216<sup>64</sup>—
  - (a) the applicant can not object to the draft environmental authority; and
  - (b) another entity may object to the draft only to the extent it relates to a relevant mining tenement that is a mining claim or mining lease.

### **‘168 Non-code compliant application fee must be paid if decision is to grant non-code compliant authority**

- ‘(1) This section applies if—
  - (a) the Minister’s decision is to grant an environmental authority (mining activities); and

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64 Section 216 (Right to make objection)

- (b) the conditions of the environmental authority are not the same as the conditions in the draft environmental authority for the application.
- ‘(2) Despite section 226<sup>65</sup> as applied under section 167, the administering authority must not issue the environmental authority until the applicant pays it the amount of the application fee for a non-code compliant application.

## ‘Division 2            Non-code compliant applications

### ‘Subdivision 1        Process if no relevant mining claim                                  or mining lease

#### ‘169    Application of sdiv 1

‘This subdivision applies to a non-code compliant application for a level 2 mining project if no relevant mining tenement is a mining claim or mining lease.

#### ‘170    Additional conditions may be imposed

- ‘(1) The administering authority may, in granting the application, impose a condition (an *additional condition*) on the environmental authority that is not a relevant standard environmental condition for the environmental authority.
- ‘(2) The applicant may ask the authority to impose an additional condition.
- ‘(3) The request must be—
  - (a) made in the application or in the approved form for the request; and
  - (b) supported by enough information to allow the authority to decide whether to impose the additional condition; and

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65    Section 226 (Grant of application)

- (c) accompanied by the fee prescribed under a regulation.
- ‘(4) In deciding whether to impose an additional condition the authority must—
  - (a) comply with any relevant EPP requirement; and
  - (b) subject to paragraph (a)—consider the standard criteria.
- ‘(5) However, an additional condition may be imposed only if the authority considers that—
  - (a) the condition is necessary or desirable; and
  - (b) if the condition is imposed, the mining project would still be a level 2 mining project.
- ‘(6) An additional condition may be imposed even if the applicant did not ask for it.

#### ‘171 **Deciding application**

- ‘(1) The administering authority must, within the required period, consider the application and decide whether—
  - (a) to grant or refuse it; and
  - (b) to impose any additional conditions.
- ‘(2) In making the decisions, the authority must consider each of the following—
  - (a) the application documents for the application;
  - (b) the standard criteria;
  - (c) the applicant’s ability to comply with the relevant standard environmental conditions;
  - (d) any suitability report obtained for the application;
  - (e) the status of any application under the Mineral Resources Act for each relevant mining tenement.
- ‘(3) In this section—

*required period* means—

  - (a) if no additional condition has been requested within 5 business days after the administering authority receives the application—within the 5 business days; or

- (b) if additional conditions have been requested within 5 business days after the administering authority receives the application—within the 10 business days after the making of the last request for an additional condition.

#### **‘171A Consequence of failure to decide**

- ‘(1) The administering authority is taken to have decided to grant the application at the end of the required period under section 171 if—
  - (a) the application requirements have been complied with for the application; and
  - (b) the authority has not decided to refuse the application.
- ‘(2) Also, if the applicant asked for an additional condition, the administering authority is taken to have decided to impose the condition on the environmental authority if the administering authority has not decided to refuse the request.

#### **‘171B Grant of application**

- ‘(1) If the administering authority decides to grant the application, it must, within 10 business days after the decision is made, issue the environmental authority in the approved form.
- ‘(2) The environmental authority must—
  - (a) either—
    - (i) contain the standard environmental conditions for each relevant mining activity; or
    - (ii) identify the conditions by reference to their gazettal or to a code of environmental compliance in which they are contained; and
  - (b) contain any additional condition imposed.
- ‘(3) The administering authority must insert the environmental authority in the appropriate register and give the applicant a copy of the environmental authority within 10 business days after the making of the decision.

### **‘171C Notice about refusal or condition decision**

- ‘(1) This section applies if the administering authority decides—
  - (a) to refuse the application; or
  - (b) to impose an additional condition on the environmental authority that is not the same, or to the same effect, as an additional condition agreed to or requested by the applicant; or
  - (c) to refuse to impose an additional condition requested by the applicant.
- ‘(2) The administering authority must, within 10 business days after the decision is made, give the applicant a written notice stating—
  - (a) the decision, and the reasons for it; and
  - (b) that the decision does not stop the applicant from applying for another environmental authority (mining activities) for the activities the subject of the application.

### **‘Subdivision 2 Process if there is a relevant mining claim or mining lease**

#### **‘171D Modified application of pt 6, divs 5 to 8**

- ‘(1) This section applies to a non-code compliant application for a level 2 mining project if any relevant mining tenement is a mining claim or mining lease.
- ‘(2) Part 6, divisions 5 to 8 apply—
  - (a) as if the application were an application for a level 1 mining project; and
  - (b) with other necessary changes.
- ‘(3) For applying section 216<sup>66</sup> an entity may object to the draft environmental authority for the application only to the extent

it relates to a relevant mining tenement that is a mining claim or mining lease.’.

**42 Replacement of ch 5, pt 4, hdg (Processing environmental authority (mining claim) applications)**

Chapter 5, part 4, heading—

*omit, insert—*

**‘Part 4 Processing non-code compliant applications for environmental authority (mining claim) for level 1 mining project’.**

**43 Amendment of s 172 (Operation of pt 4)**

Section 172, after ‘application’—

*insert—*

‘if the application is a non-code compliant application for a level 1 mining project’.

**44 Omission of s 176 (Additional conditions may be included)**

Section 176—

*omit.*

**45 Replacement of ch 5, pt 5, hdg (Processing environmental authority (exploration) and environmental authority (mineral development) applications)**

Chapter 5, part 5, heading—

*omit, insert—*



- 51 Omission of ch 5, pt 5, div 3, sdiv 2, hdg (EIS stage)**  
Chapter 5, part 5, division 3, subdivision 2, heading—  
*omit.*
- 52 Omission of ch 5, pt 5, div 3, sdiv 3, hdg (Environmental management document stage)**  
Chapter 5, part 5, division 3, subdivision 2, heading—  
*omit.*
- 53 Amendment of s 187 (Environmental management plan required)**  
(1) Section 187(2)—  
*renumber* as section 187(3).  
(2) Section 187—  
*insert*—  
'(2) The plan must comply with section 189.'
- 54 Amendment of s 188 (Purpose of environmental management plan)**  
(1) Section 188, heading, 'environmental management plan'—  
*omit, insert*—  
'submitted EM plan'.  
(2) Section 188, 'an environmental management plan'—  
*omit, insert*—  
'the submitted EM plan'.
- 55 Amendment of s 189 (Environmental management plan—content requirements)**  
(1) Section 189, heading—  
*omit, insert*—



**‘189 Content requirements for submitted EM plan’.**

- (2) Section 189(1), ‘An environmental management plan’—

*omit, insert—*

‘A submitted EM plan’.

- (3) Section 189(1)(c), after ‘state’—

*insert—*

‘, to the extent a code of environmental compliance does not apply to the relevant mining activities,’.

- (4) Section 189(1)(c) to (e)—

*renumber* as section 189(1)(d) to (f).

- (5) Section 189(1)—

*insert—*

‘(c) state any code of environmental compliance and standard environmental conditions that are to apply to the relevant mining activities; and’.

**56 Amendment of s 190 (Amending environmental management plan)**

- (1) Section 190, words before subsection (2)—

*omit, insert—*

**‘190 Submitted EM plan may be amended’.**

- (2) Section 190(2), ‘original plan’—

*omit, insert—*

‘submitted EM plan’.

- (3) Section 190(2) to (4)—

*renumber* as section 190(1) to (3).

- (4) Section 190(5)—

*omit.*

**57 Amendment of s 191 (EM plan assessment report may be prepared)**

Section 191(1), ‘a submitted environmental management plan’—

*omit, insert—*

‘the submitted EM plan’.

**58 Amendment of s 192 (Requirements for EM plan assessment report)**

Section 192(b)(i), ‘submitted environmental management plan’—

*omit, insert—*

‘submitted EM plan’.

**59 Omission of ch 5, pt 5, div 3, sdiv 4, hdg (Decision stage)**

Chapter 5, part 5, division 3, subdivision 4, heading—

*omit.*

**60 Replacement of ch 5, pt 6, hdg (Processing environmental authority (mining lease) applications)**

Chapter 5, part 6, heading—

*omit, insert—*

**‘Part 6    Processing non-code  
compliant applications for  
environmental authority  
(mining lease) for level 1  
mining project’.**

**61                          Amendment of s 196 (Operation of pt 6)**

Section 196, after ‘application’—

*insert—*

‘if the application is a non-code compliant application for a level 1 mining project’.

**62                          Replacement of s 197 (Summary of pt 6 process)**

Section 197—

*omit, insert—*

**‘197                      Summary of pt 6 process**

‘The stages for deciding the application and the main steps within each stage are as follows—

**stage 1                      EIS—divs 2 and 3 and ch 3, pt 1**

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

**stage 2                      Decision to refuse or to allow to proceed—div 4**

1 The administering authority must, within the refusal period, decide either to refuse the application or to allow it to proceed under stages 3 to 5.

2 If no refusal decision is made within the refusal period, stages 3 to 5 apply.

**stage 3**      **Draft environmental authority—div 5**

The administering authority gives the applicant a draft environmental authority that includes proposed conditions.

**stage 4**      **Public notice and objections—div 6**

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

**stage 5**      **Decision stage—div 7**

(a) If there are objections—division 7, subdivision 1

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

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

(b) If no objections or objections are withdrawn—division 7, subdivision 2

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

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

**63**      **Replacement of ch 5, pt 6, div 2, hdg (EIS stage for non-standard applications)**

Chapter 5, part 6, division 2, heading—

*omit, insert—*

**‘Division 2                      EIS stage’.**

**64 Amendment of s 198 (Application of div 2)**

Section 198, ‘the application is a non-standard application and’—

*omit.*

**65 Amendment of s 199 (EIS process applies)**

Section 199(2), ‘EMOS’—

*omit, insert—*

‘environmental management plan’.

**66 Replacement of ch 5, pt 6, div 3, hdg (Environmental management document stage for non-standard applications)**

Chapter 5, part 6, division 3, heading—

*omit, insert—*

**‘Division 3 Environmental management plan stage’.****67 Omission of s 200 (Application of div 3)**

Section 200—

*omit.*

**68 Replacement of s 201 (EMOS required)**

Section 201—

*omit, insert—*

**‘201 Environmental management plan required**

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

‘(2) The plan must comply with section 203.

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

**69 Amendment of s 202 (Purpose of EMOS)**

- (1) Section 202, heading, ‘EMOS’—  
*omit, insert—*  
‘submitted EM plan’.
- (2) Section 202, ‘an EMOS’—  
*omit, insert—*  
‘the submitted EM plan’.

**70 Amendment of s 203 (EMOS—content requirements)**

- (1) Section 203, heading—  
*omit, insert—*

**‘203 Content requirements for submitted EM plan’.**

- (2) Section 203(1), ‘EMOS’—  
*omit, insert—*  
‘EM plan’.
- (3) Section 203(1)(c), after ‘state’—  
*insert—*  
‘, to the extent a code of environmental compliance does not apply to the relevant mining activities,’.
- (4) Section 203(1)(c) to (e)—  
*renumber* as section 203(1)(d) to (g).
- (5) Section 203(1)—  
*insert—*  
‘(c) state any code of environmental compliance and standard environmental conditions that are to apply to the relevant mining activities; and’.

**71 Amendment of s 204 (Amending EMOS)**

- (1) Section 204, words before subsection (2)—  
*omit, insert—*

**‘204 Submitted EM plan may be amended’.**

- (2) Section 204(2), ‘EMOS’—  
*omit, insert—*  
‘EM plan’.
- (3) Section 204(3) and (4), ‘EMOS amendment notice’—  
*omit, insert—*  
‘EM plan amendment notice’.
- (4) Section 204(2) to (4)—  
*renumber* as section 204(1) to (3).
- (5) Section 204(5)—  
*omit.*

**72 Amendment of s 205 (EMOS assessment report may be prepared)**

- (1) Section 205, heading ‘EMOS’—  
*omit, insert—*  
‘EM plan’.
- (2) Section 205(1), ‘EMOS’—  
*omit, insert—*  
‘environmental management plan’.
- (3) Section 205(2) to (4), ‘EMOS assessment report’—  
*omit, insert—*  
‘EM plan assessment report’.
- (4) Section 205(2), ‘a submitted EMOS’—  
*omit, insert—*  
‘the submitted EM plan’.

**73 Amendment of s 206 (Requirements for EMOS assessment report)**

- (1) Section 206, ‘EMOS assessment report’—

*omit, insert—*

‘EM plan assessment report’.

- (2) Section 206(b)(i), ‘EMOS’—

*omit, insert—*

‘EM plan’.

- (3) Section 206(b)(ii), ‘EMOS’—

*omit, insert—*

‘submitted EM plan’.

**74 Amendment of s 207 (Administering authority may refuse application)**

- (1) Section 207(2)(c)—

*omit.*

- (2) Section 207(2)(d) and (e)—

*renumber* as section 207(2)(c) and (d).

- (3) Section 207(3), from ‘applicant—’ to ‘non-standard application—’—

*omit, insert—*

‘applicant’.

**75 Amendment of s 208 (Obligation to prepare draft environmental authority)**

- (1) Section 208(2)(b)—

*omit.*

- (2) Section 208(2)(c)—

*renumber* as section 208(2)(b).



**76 Omission of s 209 (Conditions—standard applications)**

Section 209—

*omit.*

**77 Amendment of s 210 (Conditions—non-standard applications)**

(1) Section 210, words before subsection (2)—

*omit, insert—*

**‘210 Conditions that may and must be included in draft environmental authority’.**

(2) Section 210(2) to (4)—

*renumber* as section 210(1) to (3).

**78 Amendment of ch 5, pt 6, div 6, hdg (Public notice and objections stage for all applications)**

Chapter 5, part 6, division 6, heading, ‘for all applications’—

*omit.*

**79 Amendment of s 213 (Public access to application documents)**

Section 213(a), from ‘at the authority’s’—

*omit, insert—*

‘during office hours on business days at—

(i) the authority’s head office; or

(ii) another appropriate office of the authority; and’.

**80 Amendment of s 216 (Right to make objection)**

(1) Section 216(2)—

*omit.*

(2) Section 216(3), ‘section 209 or 210’—

*omit, insert—*

‘section 210’.

- (3) Section 216(3) to (5)—  
*renumber* as section 216(2) to (4).

**81 Amendment of s 222 (Nature of objections decision)**

Section 222(2), ‘section 209 or 210’—  
*omit, insert*—  
‘section 210’.

**82 Amendment of s 223 (Matters to be considered for objections decision)**

- (1) Section 223(e)—  
*omit*.
- (2) Section 223(f) and (g)—  
*renumber* as section 223(e) and (f).

**83 Amendment of s 225 (EPA Minister’s decision on application)**

Section 225(3)(b), ‘section 209 or 210’—  
*omit, insert*—  
‘section 210’.

**84 Amendment of s 234 (Content requirements)**

Section 234(1)(d)(ii)(A)—  
*omit, insert*—

‘(A) if there is a submitted EM plan for the environmental authority—achieving or implementing the environmental protection commitments and control strategies under the plan; and’.

**85 Replacement of s 239 (Additional conditions may be sought for standard authorities)**

Section 239—

*omit, insert—*

**‘239 Conditions of code compliant authority may be amended**

‘An amendment application for a code compliant authority may seek to amend the relevant standard environmental conditions for the authority or to impose new conditions on the authority.

*Note—*

If the amendment is made, the authority will become a non-code compliant authority. See section 148.<sup>67</sup>.

**86 Amendment of s 240 (Requirements for application)**

Section 240(c)—

*omit, insert—*

‘(c) accompanied by each of the following—

- (i) if the annual fee for the amended environmental authority would be more than the annual fee currently payable for the authority—the amount of the next annual fee for the amended authority;<sup>68</sup>
- (ii) the fee prescribed under a regulation.’

**87 Omission of ch 5, pt 8, div 3 (Processing amendment applications for standard authorities)**

Chapter 5, part 8, division 3—

*omit.*

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<sup>67</sup> Section 148 (Types of environmental authority (mining activities))

<sup>68</sup> See also section 45A (Refund of annual fee if replacement environmental authority issued) of the *Environmental Protection Regulation 1998*.

**88 Replacement of ch 5, pt 8, div 4, hdg (Processing other amendment applications)**

Chapter 5, part 8, division 4, heading—

*omit, insert—*

**‘Division 3 Processing application’.**

**89 Omission of ch 5, pt 8, div 3, as renumbered under this Act, sdiv 1 (Preliminary)**

Chapter 5, part 8, division 3, as renumbered under this Act, subdivision 1—

*omit.*

**90 Renumbering of ch 5, pt 8, div 3, as renumbered under this Act, sdiv 2 (Assessment level decision)**

Chapter 5, pt 8, div 3, as renumbered under this Act, subdivision 2—

*renumber* as chapter 5, part 8, division 3, subdivision 1.

**91 Insertion of new s 247A**

After section 247—

*insert—*

**‘247A Criteria for making assessment level decision**

‘In making the assessment level decision, the EPA Minister is authorised to decided that the level of environmental harm caused by any relevant mining activity is likely to be significantly increased only if—

- (a) the application relates to a new relevant mining lease or mining claim for the environmental authority; or
- (b) the effect of the application is to significantly increase the level of environmental harm beyond what was caused by the existing mining activities to which the environmental authority (mining activities) relates; or

*Examples of possible significant increases—*

- 1 an increase in the rate of production or disturbance under a relevant mining activity beyond the level provided for under the environmental authority
  - 2 the building of additional infrastructure
- (c) the application relates to an addition to the surface area of a relevant mining lease for the environmental authority.’.

**92 Replacement of s 248 (Automatic refusal if EIS required)**

Section 248—

*omit, insert—*

**‘248 Notice of EIS requirement**

‘If the EIS decision is that an EIS is required for the proposed amendment, the administering authority must give the applicant a written notice stating—

- (a) the decision, and the reasons for it; and
- (b) that, under section 41,<sup>69</sup> the applicant must submit to the chief executive draft terms of reference for the EIS.

**93 Renumbering of ch 5, pt 8, div 3, as renumbered under this Act, sdiv 3 (Process if decision is significant increase in environmental harm likely and EIS not required)**

Chapter 5, pt 8, div 3, as renumbered under this Act, subdivision 3—

*renumber* as chapter 5, part 8, division 3, subdivision 2.

**94 Amendment of s 250 (Application of sdiv 3)**

Section 250, heading, ‘sdiv 3’—

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<sup>69</sup> Section 41 (Submission)

*omit, insert—*

‘sdiv 2’.

**95 Amendment of s 251 (Relevant application process applies)**

(1) Section 251(2)—

*omit, insert—*

‘(2) If the environmental authority is an environmental authority (mining claim) or environmental authority (mining lease) the following provisions apply, with necessary changes, as if the application were an application for the authority—

(a) for a code compliant authority or a non-code compliant authority for a level 2 mining project—part 3, division 2, subdivision 2;<sup>70</sup>

(b) for a non-code compliant authority for a level 1 mining project—part 6, divisions 3 to 8.’.

(2) Section 251(3)(b), after ‘subject to’—

*insert—*

‘subsections (4) and (5) and’.

(3) Section 251—

*insert—*

‘(4) To remove any doubt, it is declared that an objection made under section 216,<sup>71</sup> as applied under subsection (2)—

(a) may be made about an existing provision of the environmental authority only to the extent the provision is proposed to be amended under the application; and

(b) can not be made about mining activities carried out under the environmental authority before the deciding of the application.

<sup>70</sup> Part 3, division 2 (Non-code compliant applications), subdivision 2 (Process if there is a relevant mining claim or mining lease)

<sup>71</sup> Section 216 (Right to make objection)

- ‘(5) For part 6, division 7, as applied under subsection (2), the tribunal, in making the objections decision, or the EPA Minister, in making a decision under section 225,<sup>72</sup> may have regard to—
- (a) an existing provision of the environmental authority, whether or not the provision is proposed to be amended under the application; and
  - (b) all or any mining activities carried out under the environmental authority before the deciding of the application.’.

**96 Replacement of s 253 (Previous environmental management document may be amended)**

Section 253—

*omit, insert—*

**‘253 Submitted EM plan may be amended**

- ‘(1) The applicant may comply with the provisions about submitted EM plans applied under section 251 by submitting an amended version of the current submitted EM plan for the environmental authority.
- ‘(2) However, the amendments must comply with the provisions about submitted EM plans, as applied under section 251.’.

**97 Renumbering of ch 5, pt 8, div 3, as renumbered under this Act, sdiv 4 (Process if decision is significant environmental harm unlikely)**

Chapter 5, pt 8, div 3, as renumbered under this Act, subdivision 4—

*renumber* as chapter 5, part 8, division 3, subdivision 3.

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<sup>72</sup> Part 6, division 7 (Decision stage)

Section 225 (EPA Minister’s decision on application)

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**98 Amendment of s 256 (Application of sdiv 4)**

Section 256, heading, ‘sdiv 4’—

*omit, insert—*

‘sdiv 3’.

**99 Insertion of new s 258A**

Chapter 5, part 8—

*insert—*

**‘258A Submitted EM plan may be amended**

‘(1) If the amendment is made, the applicant may submit an amended version of the current submitted EM plan for the environmental authority.

‘(2) However, the amendments in the amended version—

(a) can only be amendments that are necessary to reflect the amendment to the environmental authority; and

(b) must comply with the requirements that apply under section 189 or 203 for a submitted EM plan.’.

**100 Amendment of s 259 (Transfer only by approval)**

Section 259(2)—

*omit, insert—*

‘(2) To remove any doubt, it is declared that a transfer application may be made, and a transfer may be approved, for a transfer from joint holders of an environmental authority (mining activities) under which 1 or more of the joint holders will continue to hold the environmental authority.’.

**101 Amendment of s 260 (Requirements for transfer application)**

(1) Section 260, heading, ‘Requirements’—

*omit, insert—*

‘General requirements’.



- (2) Section 260(2), after ‘authority.’—

*insert—*

*Note—*

If the amendment is made and the conditions of the authority are amended or new conditions are imposed on it, the environmental authority will become a non-code compliant authority. See section 148.<sup>73</sup>.

## 102 Insertion of new s 260A

After section 260—

*insert—*

### **‘260A Additional requirement for transfer application for code compliant authority if no amendment application made**

- ‘(1) This section applies if—
- (a) the environmental authority (mining activities) is a code compliant authority; and
  - (b) the transfer application is not accompanied by an amendment application.
- ‘(2) The transfer application must also include a certification by the proposed transferee that—
- (a) all mining activities to be carried out by the proposed transferee under the environmental authority comply with the criteria prescribed under section 151<sup>74</sup> for that type of environmental authority to be a code compliant authority; and
  - (b) the proposed transferee can, in carrying out the mining activities, comply with the relevant standard environmental conditions for the environmental authority.

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<sup>73</sup> Section 148 (Types of environmental authority (mining activities))

<sup>74</sup> Section 151 (What is a *level 1 mining project* and a *level 2 mining project*)

*Note—*

A subsequent failure to comply with any of the standard environmental conditions may result in the commission of an offence or in action to amend, suspend or cancel the environmental authority. See sections 165, 292(2)(a), 293(2)(a) and 480(4).<sup>75</sup>.

**103 Amendment of s 262 (Deciding application)**

Section 262(2)(b), ‘relevant standard environmental conditions’—

*omit, insert—*

‘conditions of the environmental authority’.

**104 Amendment of s 265 (Effect of plan of operations and environmental management documents after transfer)**

Section 265, from ‘The’ to ‘operations’—

*omit, insert—*

‘Any submitted EM plan or plan of operations’.

**105 Amendment of s 274 (Content requirements for report)**

Section 274(b), ‘relevant environmental management document’—

*omit, insert—*

‘submitted EM plan for the environmental authority (mining activities)’.

**106 Amendment of s 280 (Administering authority may require environmental audit)**

Section 280(1)(a), example 2, ‘relevant environmental management documents’—

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<sup>75</sup> Sections 165 (Conditions of code compliant authority), 292 (Other amendments), 293 (Conditions for cancellation or suspension) and 480 (False, misleading or incomplete documents)

*omit, insert—*

‘any submitted EM plan for the environmental authority’.

**107 Omission of s 291 (Other amendments—standard authorities)**

Section 291—

*omit.*

**108 Amendment of s 292 (Other amendments—non-standard authorities)**

(1) Section 292, heading—

*omit, insert—*

**‘292 Other amendments’.**

(2) Section 292(1) ‘a non-standard’—

*omit, insert—*

‘an’.

(3) Section 292(2)(b), ‘representation or declaration’—

*omit, insert—*

‘certificate, declaration or representation’.

(4) Section 292(2)(1), example, ‘EMOS’—

*omit, insert—*

‘submitted EM plan’.

(5) Section 292(3), ‘an environmental management document or plan of operations’—

*omit, insert—*

‘any submitted EM plan or plan or operations for the environmental authority’.

**109 Amendment of s 293 (Conditions)**

(1) Section 293, heading—

*omit, insert—*

**‘293 Conditions for cancellation or suspension’.**

(2) Section 293(2)(a), from ‘issued’ to ‘declaration’—

*omit, insert—*

‘issued or has been transferred because of a materially false or misleading certificate, declaration or representation’.

**110 Amendment of s 302 (Requirement to seek advice from MRA chief executive)**

Section 302(1)(c) and (d)—

*omit, insert—*

‘(c) make another decision under this part about a non-code compliant application or a non-code compliant authority for a level 1 mining project, to which decision the applicant or authority holder has not agreed to in writing.’.

**111 Insertion of new ch 5, pt 13, div 1A**

Chapter 5, part 13—

*insert—*

**‘Division 1A            Transfer of interest in an application  
for or to transfer environmental  
authority (mining activities)**

**‘302A Amending application to change applicant**

‘(1) This section applies to an application for, or to transfer, an environmental authority (mining activities) if the application has not been decided.

‘(2) The applicant may, by written notice to the administering authority, amend the application to change the name of the applicant.

‘(3) The notice must be signed by each person who is currently an applicant for the application and each person (a *revised*

*applicant*) who, after the giving of the notice, will be an applicant for the application.

- ‘(4) Any step taken under this chapter in relation to the application before the giving of the notice is taken to have been made as if the step had been taken in relation to each revised applicant.
- ‘(5) Otherwise, the amendment does not affect the requirements under this Act for the making and deciding of the application.’.

**112 Omission of ch 6, pt 1 (Integrated authorities)**

Chapter 6, part 1—  
*omit.*

**113 Omission of ch 6, pt 2, hdg (Miscellaneous provisions)**

Chapter 6, part 2, heading—  
*omit.*

**114 Amendment of s 318A (Changing anniversary day)**

Section 318A(8)—  
*omit.*

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

- (1) Section 364(1) and (2)(a), ‘environmental authority, other than a level 2 approval,’—  
*omit, insert—*  
‘environmental authority (mining activities)’.
- (2) Section 364(1)(a), from ‘any conditions’—  
*omit, insert—*

‘any conditions of the program or plan;<sup>76</sup> and’.

- (3) Section 364(4) and (5)—

*renumber* as section 364(6) and (7).

- (4) Section 364—

*insert*—

‘(4) The administering authority may decide the amount by reference to a guideline or other publicly available document.

‘(5) The form of the financial assurance may require the amount of the financial assurance to be changed in stated circumstances, without having to amend the environmental authority, environmental management program or site management plan to provide for the change.’.

- (5) Section 364(6), as renumbered, ‘However’—

*omit, insert*—

‘Despite subsections (3) to (5)’.

- (6) Section 364(6), as renumbered, ‘environmental harm being caused by the activity’—

*omit, insert*—

‘environmental harm that may be caused by the activity’.

- (7) Section 364—

*insert*—

- ‘(8) In this section—

*costs and expenses* includes monitoring and maintenance costs and expenses.’.

**116 Amendment of s 365 (Person may show cause why financial assurance should not be required)**

- (1) Section 365, heading, after ‘required’—

*insert*—

<sup>76</sup> For environmental authorities, see section 317 (Reference to environmental authority includes its conditions).

‘for environmental management program or site management plan’.

- (2) Section 365(1), from ‘an environmental authority’ to ‘level 2 approval, or’—

*omit, insert—*

‘a’.

- (3) Section 365(1), ‘authority or’—

*omit.*

- (4) Section 365(2)(c), ‘environmental authority or’—

*omit.*

- (5) Section 365(4)(b), ‘issues the environmental authority or’—

*omit.*

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

Section 367(8)—

*insert—*

*‘financial assurance* means—

- (a) financial assurance for an environmental authority (petroleum activities), given under chapter 4A, part 7; or
- (b) any other financial assurance given under a condition imposed under section 364.’.

### **118 Amendment of s 426 (Environmental authority required for mining or petroleum activity)**

- (1) Section 426(1)(a) and (b)—

*omit, insert—*

- ‘(a) if the activity is a mining activity—a non-code compliant authority under chapter 5 for the level 1 mining project of which the mining activity is part; or
- (b) if the activity is a level 1 petroleum activity—an environmental authority (petroleum activities) for the petroleum activity.’.

(2) Section 426(2)(a) and (b)—

*omit, insert—*

‘(a) if the activity is a mining activity—a code compliant authority or a non-code compliant authority under chapter 5 for the level 2 mining project of which the mining activity is part; or

‘(b) if the activity is a level 2 petroleum activity—an environmental authority (petroleum activities) for the petroleum activity.’.

**119 Omission of s 428 (New approval required for certain activities if significant change)**

Section 428—

*omit.*

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

Section 429(3), definition *interstate licence*, after ‘environmental authority’—

*insert—*

‘, a development approval for a chapter 4 activity or a registration certificate’

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

(1) Section 430, penalties, paragraphs (a), from ‘for a licence’ to ‘(mining activities)’—

*omit, insert—*

‘for an environmental authority (petroleum activities) for a level 1 petroleum activity or for a non-code compliant authority under chapter 5 for a level 1 mining project’.

(2) Section 430, penalties, paragraphs (b), from ‘for a level 2 approval’ to ‘(mining activities)’—



*omit, insert—*

‘for an environmental authority (petroleum activities) for a level 2 petroleum activity or for a code compliant authority or a non-code compliant authority under chapter 4A for a level 2 mining project’.

## **122 Amendment of s 480 (False, misleading or incomplete documents)**

Section 480—

*insert—*

- ‘(4) Without limiting subsection (1), a document is taken to be false or misleading if—
- (a) it includes a certification under section 90(c) or 132(2)<sup>77</sup> and the code compliance condition for the code compliant authority for which the certification was given is not complied with; or
  - (b) it is a certification under section 154(1)(c)(ii), 260A or 603A(c)<sup>78</sup> and a standard environmental condition for the code compliant authority which the certification relates to is not complied with.
- ‘(5) However, subsection (4) does not apply if the person shows that when the certification was made the person had reasonable grounds to believe that the person could comply with the condition.’.

## **123 Amendment of s 495 (Proceedings for indictable offences)**

Section 495(4)—

*omit, insert—*

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<sup>77</sup> Section 90 (Requirements for application) or 132 (Additional requirement for transfer application for code compliant authority if no amendment application made)

<sup>78</sup> Section 154 (General requirements for application), 260A (Additional requirement for transfer application for code compliant authority if no amendment application made) or 603A (Requirements for conversion application)

- ‘(4) The maximum penalty of imprisonment that may be summarily imposed for an indictable offence is 1 year’s imprisonment.’.

**124 Amendment of s 520 (Dissatisfied person)**

- (1) Section 520(1)(d)—

*omit.*

- (2) Section 520(1)(ba) and (c)—

*renumber* as section 520(1)(c) and (d).

- (3) Section 520(2)(a)—

*omit, insert—*

‘(a) an application for an environmental authority (petroleum activities) for a level 1 petroleum activity; or’.

- (4) Section 520(2)(b), ‘chapter 4A, part 3’—

*omit, insert—*

‘chapter 4A’.

**125 Amendment of s 529 (Decision for appeals against refusals under s 207)**

Section 529(1), ‘a non-standard application’—

*omit, insert—*

‘an application’.

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

- (1) Section 540(1)(d), after ‘environmental authorities’—

*insert—*

‘(petroleum activities)’.

- (2) Section 540(1)(d)(iii)—

*omit, insert—*

‘(iii) FRR assessment reports;’.

- (3) Section 540(1)(e)(ii), ‘environmental management documents’—  
*omit, insert—*  
‘EM plans’.
- (4) Section 540(1)(e)(iii), ‘and EMOS assessment reports’—  
*omit.*

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

Section 549(1), after ‘activity’—

*insert—*

‘or the giving of financial assurance as security for—

- (a) compliance with the relevant environmental authority;  
and
- (b) costs or expenses, or likely costs or expenses, mentioned in section 367.<sup>79</sup>’.

**128 Replacement of ss 550 and 550A**

Sections 550 and 550A—

*omit, insert—*

**‘550 Effect of changes to standard environmental conditions**

‘If—

- (a) there are standard environmental conditions (the *existing conditions*) for a chapter 4 activity or environmentally relevant activity; and
- (b) under section 549, a change is approved to the existing conditions;

despite the change, the existing conditions continue to apply for the chapter 4 activity or environmentally relevant activity until 1 year after the day the change is approved.<sup>80</sup>.

## **129 Amendment of s 575 (Entry orders)**

- (1) Section 575(5), ‘an environmental requirement’—  
*omit, insert—*  
‘the environmental requirement’.
- (2) Section 575(7) to (9)—  
*renumber* as section 579(8) to (10).
- (3) Section 575—  
*insert—*  
‘(7) Unless the court otherwise orders, an entry order remains in force until the environmental requirement is complied with.’.
- (4) Section 575(8), as renumbered, after ‘must state’—  
*insert—*  
‘each of’.
- (5) Section 575(8)(d), as renumbered—  
*omit, insert—*  
‘(d) if the court has made an order under subsection (7)—when the entry order ends;  
(e) if the court has not made an order under subsection (7)—that the entry order remains in force until the environmental requirement has been complied with.’.
- (6) Section 575(10), as renumbered, ‘subsection (8)’—  
*omit, insert—*  
‘subsection (9)’.

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80 For registered operators, see however section 333 (Voluntary submission of draft program).

### 130 Replacement of s 579 (Compensation)

Section 579—

*omit, insert—*

#### ‘579 Compensation

- ‘(1) This section applies if a person (the *responsible person*) who, under this Act, must comply with an environmental requirement, enters, or authorises someone else to enter, land to which the requirement relates to comply with the requirement.
- ‘(2) Compensation is payable from the responsible person to any owner or occupier of the land for any compensatable effect the owner or occupier suffers because of—
- (a) the entry; or
  - (b) work conducted in relation to the land to comply, or purport to comply, with the environmental requirement.
- ‘(3) However, compensation is not payable under subsection (2)(b) if the work was conducted by someone other than the responsible person and the responsible person did not authorise the other person to conduct the work.
- ‘(4) The compensation may be claimed and ordered in a proceeding brought in a court of competent jurisdiction, including, for example, in an application under any of the following provisions to which the responsible person and the owner or occupier are parties—
- (a) the Mineral Resources Act, section 281 or 283B;
  - (b) the *Petroleum Act 1923*, section 79R;
  - (c) the P&G Act, section 533.<sup>81</sup>
- ‘(5) A court may order the payment of the compensation only if it is satisfied it is just to make the order in the circumstances of the particular case.

---

81 Mineral Resources Act, section 281 (Determination of compensation by tribunal) or 283B (Review of compensation by tribunal)  
*Petroleum Act 1923*, section 79R (Deciding compensation through tribunal)  
 P&G Act, section 533 (Deciding compensation through tribunal)

‘(6) In this section—

***compensatable effect*** means all or any of the following in relation to the land—

- (a) deprivation of possession of its surface;
- (b) diminution of its value;
- (c) diminution of the use made, or that may be made, of the land or any improvement on it;
- (d) severance of any part of the land from other parts of the land or from other land that the owner or occupier owns;
- (e) any other cost or loss arising from the work.

***enter*** includes an entry with the consent of the owner or occupier.

***owner*** includes—

- (a) for land under the *Land Act 1994* for which there are trustees—the trustees; or
- (b) for land held under a lease under the *Local Government (Aboriginal Lands) Act 1978*, section 3<sup>82</sup>—a relevant local government; or
- (c) for land under a lease from the State under the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* that has been excised from land granted in trust for Aboriginal or Torres Strait Islander purposes under the *Land Act*—the trustees of the land; or
- (d) for a conservation park or resources reserve under the *Nature Conservation Act 1992* (the *NCA*) for which there are trustees—
  - (i) if, under the *NCA*, the park or reserve has trustees whose powers are not restricted—the trustees; or
  - (ii) otherwise—the chief executive of the department in which the *NCA* is administered; or
- (e) the State, for land that is any of the following—

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

- (i) unallocated State land;
- (ii) a reserve under the Land Act for which there is no trustee;
- (iii) a national park, national park (Aboriginal land), national park (scientific), national park (Torres Strait Islander land), national park (recovery) or forest reserve under the NCA;
- (iv) a State forest or timber reserve under the *Forestry Act 1959*;
- (vi) a State controlled road under the *Transport Infrastructure Act 1994*.

**131 Amendment of s 584 (Definitions for pt 2)**

- (1) Section 584, definition *conversion application*—  
*omit.*
- (2) Section 584—  
*insert*—  
*‘additional conditions* see section 603(3).  
*conversion application* see section 603(2).’.

**132 Amendment of s 585 (What is a *condition* of a mining tenement for div 2)**

Section 585(4), definition *planning document*, paragraph (d)(i), ‘EMOS’—  
*omit, insert*—  
*‘environmental management overview strategy’.*

**133 Replacement of s 593 (Transitional authority taken to be non-standard)**

Section 593—  
*omit, insert*—

**‘593 Transitional authority taken to be non-code compliant**

‘A transitional authority is taken to be a non-code compliant authority under chapter 5, issued for mining activities that are level 1 environmentally relevant activities.’.

**134 Replacement of s 603 (Conversion to standard authority by application)**

Section 603—

*omit, insert—*

**‘603 Application to convert transitional authority to environmental authority for a level 2 mining project**

- ‘(1) This section applies despite chapter 5, part 8.
- ‘(2) A transitional authority holder who holds each relevant mining tenement may apply (a *conversion application*) to the administering authority to convert the transitional authority to either of the following under chapter 5—
- (a) a code compliant authority;
  - (b) a non-code compliant authority for a level 2 mining project.
- ‘(3) If the application is for a non-code compliant authority for a level 2 mining project, it may also request that conditions (*additional conditions*) other than the relevant standard environmental conditions be imposed on the authority.

**‘603A Requirements for conversion application**

‘A conversion application must—

- (a) be in the approved form; and
- (b) state the type of environmental authority (mining activities) under section 603(2) to which the transitional authority is proposed to be converted; and



- (c) if the application is for a code compliant authority—certify that all mining activities proposed to be carried out under it comply with the criteria prescribed under section 151(2)(a)<sup>83</sup> for the stated type of environmental authority to be a code compliant authority under chapter 5; and
- (d) if the application is for a non-code compliant authority for a level 2 mining project—certify that the applicant can, in carrying out the relevant mining activities for the converted authority, comply with—
  - (i) the relevant standard environmental conditions for the stated type of environmental authority; or
  - (ii) the relevant standard environmental conditions and any additional conditions requested; and
- (e) be accompanied by the fee prescribed under a regulation.

### **‘603B Automatic conversion for particular applications**

- ‘(1) This section applies on the making of a conversion application if it complies with section 603A.
- ‘(2) If the application is for a code compliant authority, the relevant transitional authority becomes a code compliant authority under chapter 5.
- ‘(3) If the application is for a non-code compliant authority for a level 2 mining project and no additional conditions are requested in the application, the relevant transitional authority becomes a non-code compliant authority for a level 2 mining project.

### **‘603C Deciding application if additional conditions requested**

- ‘(1) This section applies if the conversion application is for a non-code compliant authority for a level 2 mining project and additional conditions are requested in the application.

---

83 Section 151 (What is a *level 1 mining project* and a *level 2 mining project*)

- ‘(2) The administering authority must, within 10 business days after it receives the application, decide whether—
- (a) to grant the application; and
  - (b) if it decides to grant—to impose the additional conditions.
- ‘(3) However, an additional condition may be imposed only if the administering authority considers—
- (a) the condition is necessary or desirable; and
  - (b) that, if the condition is imposed, the proposed non-code compliant authority would still be for a level 2 mining project.
- ‘(4) In making the decisions, the administering authority must consider the criteria mentioned in section 173(2).
- ‘(5) On, the granting of the application, the relevant transitional authority is taken to be a non-code compliant authority for a level 2 mining project.
- ‘(6) If additional conditions are imposed on the non-code compliant authority, the administering authority must, within 10 business days after the granting of the application—
- (a) amend the non-code compliant authority to include the conditions; and
  - (b) record particulars of the amendment in the appropriate register; and
  - (c) give the applicant a copy of the amended non-code compliant authority.’.

**135 Amendment of ch 13, pt 2, div 4, sdiv 4, hdg (Environment management document requirements)**

Chapter 13, part 2, division 4, subdivision 4, heading, ‘document’—

*omit, insert—*

‘plan’.

**136 Amendment of s 608 (Environmental management document may be required)**

- (1) Section 608, heading, ‘document’—  
*omit, insert—*  
‘plan’.
- (2) Section 608(2), from ‘submit to it’—  
*omit, insert—*  
‘submit an environmental management plan to it.’.
- (3) Section 608(4)—  
*omit, insert—*
- ‘(4) An environmental management plan submitted under this section is taken to be the submitted EM plan for the transitional authority.’.

**137 Omission of s 622 (Effect of commencement on particular integrated authorities)**

Section 622—  
*omit.*

**138 Insertion of new ch 13, pt 7**

After section 634—  
*insert—*

**‘Part 7 Transitional provisions for  
Environmental Protection and  
Other Legislation Amendment  
Act 2004**

**‘Division 1 Preliminary**

### **‘635 Definitions for pt 7**

‘In this part—

*commencement* means the commencement of the *Environmental Protection and Other Legislation Amendment Act 2004*, section 32.<sup>84</sup>

*existing Act* means this Act as in force immediately before the commencement.

*new chapter 4A* means chapter 4A immediately after the commencement.

*old chapter 4A* means chapter 4A under the existing Act.

## **‘Division 2 Provisions for former integrated authorities**

### **‘636 Application of div 2**

‘This division applies to the constituent parts of an integrated authority that, under the existing Act, were in force immediately before the commencement.

### **‘637 Continuing status of each constituent part as an environmental authority**

‘(1) This section—

(a) applies despite the repeal of former chapter 6, part 1;<sup>85</sup> and

(b) is subject to section 638.

‘(2) From the commencement, each of the constituent parts continues to be an environmental authority of the type stated in the integrated authority.

---

84 *Environmental Protection and Other Legislation Amendment Act 2004*, section 32 (Replacement of ch 4A (Environmental authorities for petroleum activities))

85 Former chapter 6, part 1 (Integrated authorities)

- ‘(3) The repeal does not change the anniversary days of the environmental authorities.
- ‘(4) The relevant provisions of new chapter 4A or chapter 5 and chapter 6 apply to the environmental authorities.

**‘638 Re-issuing of environmental authorities if they do not form a single mining or petroleum project**

- ‘(1) The administering authority may, at any time after the commencement, decide whether the constituent parts together form a single mining or petroleum project.
- ‘(2) If the administering authority decides the constituent parts are for different mining or petroleum projects, it may—
  - (a) cancel the constituent parts as environmental authorities; and
  - (b) issue to the former holder of the cancelled constituent parts new environmental authorities (mining activities) or environmental authorities (petroleum activities) for each of the different mining or petroleum projects.
- ‘(3) The conditions of each of the new environmental authorities must be the conditions of the cancelled constituent parts that applied to the mining or petroleum project the subject of the new environmental authority, subject to any necessary changes.

**‘Division 3 Other provisions**

**‘639 Environmental authorities under old chapter 4A**

- ‘(1) A licence, other than a provisional licence, under old chapter 4A in force immediately before the commencement is, on the commencement, taken to be a non-code compliant authority under new chapter 4A for a level 1 petroleum activity.
- ‘(2) On the commencement, a provisional licence under old chapter 4A ceases to be an environmental authority.

- ‘(3) A level 2 approval under old chapter 4A in force immediately before the commencement is, on the commencement, taken to be a non-code compliant authority under new chapter 4A, for a level 2 petroleum activity.

#### **‘640 Applications in progress under old chapter 4A**

- ‘(1) An environmental authority application under old chapter 4A that, immediately before the commencement, had not been decided is taken to be an application—
- (a) if it is for a level 2 petroleum activity—under new chapter 4A, part 2, division 3, subdivision 2; or
  - (b) if it is for a level 1 petroleum activity—under new chapter 4A, part 2, division 4.<sup>86</sup>
- ‘(2) An amendment, surrender or transfer application under old chapter 4A that, immediately before the commencement had not been decided is, on the commencement, taken to be the corresponding type of application under new chapter 4A.

#### **‘641 Existing environmental management documents**

‘The current environmental management plan or current EMOS under the existing Act for, or for an application for, an environmental authority (mining activities), is on the commencement taken to be the submitted EM plan for the environmental authority or application.<sup>87</sup>’

#### **139 Amendment of sch 1 (Original decisions)**

- (1) Schedule 1, part 1, division 2, entry for section 207(1), ‘(for a non-standard application only)’—

*omit.*

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86 New chapter 4A, part 2, division 3, subdivision 2 (Non code compliant authorities) and division 4 (Level 1 petroleum activities)

87 See the existing Act, sections 187 (Environmental management plan required), 201 (EMOS required) and 253 (Previous environmental management document may be amended).

- (2) Schedule 1, part 1, divisions 2 to 4—  
*renumber* as schedule 1, part 1, divisions 3 to 5.
- (3) Schedule 1, part 1—  
*insert*—

## **‘Division 2                      Decisions under chapter 4A**

<b>Section</b>	<b>Description of decision</b>
96	Refusal of application for environmental authority (petroleum activities) for level 2 petroleum activity
98	Imposition of condition of environmental authority (petroleum activities) for level 2 petroleum activity, other than a condition that is the same, or is to the same effect, as a condition agreed to or requested by the applicant
109(1) and (2)	Decision not to allow application to proceed
109(3)(b)	Fixing of new notice period or submission period
112	Grant or refusal of application for environmental authority (petroleum activities) for level 1 petroleum activity
114	Imposition of condition of environmental authority (petroleum activities) for level 1 petroleum activity, other than a condition that is the same, or is to the same effect, as a condition agreed to or requested by the applicant
122(1)	Decision to make public notice requirement for amendment application
124	Refusal of amendment application
124(2)	Decision to grant an amendment application subject to the applicant’s written agreement to the administering authority amending the environmental authority in a stated way
134	Refusal of transfer

<b>Section</b>	<b>Description of decision</b>
140(2)	Decision to give surrender notice
140(2)	Fixing of period for compliance with surrender notice
145A	Refusal of surrender
145J(1)	Proposed action decision
145O(2)	Decision to require the giving of financial assurance’.
(4)	Schedule 1, part 2, division 1C— <i>omit.</i>
(5)	Schedule 1, part 2, division 3, entries for section 311(5)(a) and 311(5)(b)— <i>omit.</i>
(6)	Schedule 1, part 2, divisions 1A to 6— <i>renumber</i> as schedule 1, part 2, divisions 1 to 8.

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

- (1) Schedule 3, definitions, *additional condition, application requirements, approval, assessment level decision, constituent part, EMOS, EMOS amendment notice, EMOS assessment report, EM plan assessment report, environmental management document, environmental management plan, final rehabilitation report, FRR assessment report, IEMS submission, integrated authority, integrated authority application, joint applicants, joint application, level 1 environmentally relevant activity, level 2 approval, level 2 environmentally relevant activity, licence, licensed place, missing information, non-standard application, non-standard environmental authority (mining activities), petroleum activity, proposed transferee, provisional licence, public notice requirement, standard application, standard mining activity and submitted EMOS—  
*omit.**
- (2) Schedule 3—



*insert—*

**‘additional condition**, for chapter 5, part 3, division 2, see section 170(1).

**application requirements**, for chapter 5, see section 154(3).

**assessment level decision**, for chapter 5, part 8, means—

- (a) generally—the assessment level decision under section 246(1)(a) and (3); but
- (b) if, under section 247(2), the EPA Minister has made the assessment level decision—that decision.

**code compliance condition**, for chapter 4A, see section 93(1).

**code compliant application**, for chapter 5, see section 154(4).

**code compliant authority** for—

- (a) chapter 4A—see section 75(2); or
- (b) chapter 5—see section 148(3).

**EM plan assessment report** for—

- (a) chapter 5, part 5, see section 191(1); or
- (b) chapter 5, part 6, see section 205(2).

**environmental authority (petroleum activities)** see section 74(2).

**environmental management plan**, for—

- (a) chapter 3, part 1—see section 39; or
- (b) chapter 4A—means an environmental management plan under section 103; or
- (c) chapter 5—
  - (i) for, or for an application for, an environmental authority (exploration) or environmental authority (mineral development)—means a submitted EM plan under section 189; or
  - (ii) for, or for an application for, an environmental authority (mining lease)—means a submitted EM plan under section 203.

***final rehabilitation report*** means—

- (a) for chapter 4A—a final rehabilitation report prepared under chapter 4A, part 5, division 3; or
- (b) for chapter 5—a final rehabilitation report prepared under chapter 5, part 10, division 2, subdivision 2.

***financial assurance***, for an environmental authority (petroleum activities) means financial assurance for the authority given under chapter 4A, part 7.

***FRR assessment report***, for—

- (a) chapter 4A—see section 145; or
- (b) chapter 5—see section 276.

***joint applicants*** for—

- (a) chapter 4A—see section 85; or
- (b) chapter 5—see section 157.

***joint application*** for—

- (a) chapter 4A—see section 86(1); or
- (b) chapter 5—see section 158(1).

***level 1 environmentally relevant activity*** means a level 1 environmentally relevant activity under section 20.

***level 2 environmentally relevant activity*** means a level 2 environmentally relevant activity under section 20.

***level 1 petroleum activity*** see section 77(2).

***level 2 petroleum activity*** see section 77(3).

***level 1 mining project*** see section 151(1).

***level 2 mining project*** see section 151(2).

***non-code compliant application***, for chapter 5, see section 154(5).

***non-code compliant authority*** for—

- (a) chapter 4A—see section 75(4); or
- (b) chapter 5—see section 154(5).

***P&G Act*** see section 76(2).

***petroleum activity*** see section 77(1).

***petroleum authority*** see section 76(1).

***petroleum legislation*** see section 76(3).

***petroleum project*** see section 80.

***public notice requirement***, for chapter 4A, see section 122(1).

***relevant petroleum activity*** see section 79.

***relevant petroleum authority*** see section 78.

***relevant place***, for chapter 4A, part 2, see section 81.

***submitted EM plan***—

- 1 The *submitted EM plan* for, or for an application for, an environmental authority (exploration) or environmental authority (mineral development) is the environment management plan for the authority submitted under section 187, as amended from time under section 190, 253 or 258A.
  - 2 The *submitted EM plan* for, or for an application for, an environmental authority (mining lease) is the environment management plan for the authority submitted under section 201, as amended from time under section 204, 253 or 258A.’.
- (3) Schedule 3, definition *amendment application*, paragraph (a)—  
*omit, insert*—  
‘(a) chapter 4A—see section 118.’.
- (4) Schedule 3, definition *anniversary day*, for an environmental authority, item 2—  
*omit*.
- (5) Schedule 3, definition *anniversary day*, for an environmental authority, items 3 and 4—  
*renumber* as items 2 and 3.
- (6) Schedule 3, definition *applicants*, paragraph (a)—  
*omit, insert*—

- ‘(a) for chapter 4A, part 4—see section 130(b); or’.
- (7) Schedule 3, definition *application notice*, paragraph (b), first occurrence—  
*omit, insert—*  
‘(a) chapter 4A, part 2, division 4—see section 106(1); or’.
- (8) Schedule 3, definition *correction*, paragraph (a)—  
*omit, insert—*  
‘(a) for chapter 4A, part 6—see section 145D; or’.
- (9) Schedule 3, definition *environmental protection commitment*, ‘an environmental management document’—  
*omit, insert—*  
‘a submitted EM plan’.
- (10) Schedule 3, definition *environmental protection commitment*, paragraphs (a) and (b), ‘document’—  
*omit, insert—*  
‘plan’.
- (11) Schedule 3, definition *environmental requirement*—  
*insert—*  
‘(d) a condition of an environmental authority that has ended or ceased to have effect, if the condition—  
(i) continues to apply after the authority has ended or ceased to have effect; and  
(ii) has not been complied with.<sup>88</sup>’.
- (12) Schedule 3, definition *person*, paragraph (b)—  
*omit, insert—*  
‘(b) chapter 4A, part 2—see section 81.’.
- (13) Schedule 3, definition *properly made submission*, paragraph (b)—

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<sup>88</sup> See sections 98 and 114 (Conditions that may and must be imposed) and 305(3) (Conditions that may be made) and schedule 3, definition *conditions*.

*omit, insert—*

‘(b) chapter 4A, part 2, division 4—see section 111(2).’.

- (14) Schedule 3, definition *proposed action*, paragraph (b)—

*omit, insert—*

‘(b) for chapter 4A, part 6, division 2—see section 145H(1)(a); or’.

- (15) Schedule 3, definition *proposed action decision*, paragraph (b)—

*omit, insert—*

‘(b) chapter 4A, part 6, division 2—see section 145J(2).’.

- (16) Schedule 3, definition *submission period*, paragraph (b)—

*omit, insert—*

‘(b) chapter 4A, part 2—see section 81.

- (17) Schedule 3, definition *surrender application*, paragraph (a)—

*omit, insert—*

‘(a) chapter 4A—see section 137(1)(a); or’.

- (18) Schedule 3, definition *surrender notice*, paragraph (a)—

*omit, insert—*

‘(a) chapter 4A—see section 140(2); or’.

- (19) Schedule 3, definition *transfer application*, paragraph (a)—

*omit, insert—*

‘(a) chapter 4A—see section 129(1)(a); or’.

## Part 4 **Amendment of Integrated Planning Act 1997**

### 141 Act amended in pt 4

This part amends the *Integrated Planning Act 1997*.

**142 Insertion of new ch 6, pt 5**

After section 6.4.1—

*insert—*

**‘Part 5 Transitional provisions for  
Environmental Protection and  
Other Legislation Amendment  
Act 2004****‘6.5.1 When particular development approvals lapse**

- ‘(1) This section applies if during the currency period for a development approval for a material change of use given after 30 March 1998—
- (a) a development permit for works associated with the change of use takes, or took, effect; and
  - (b) the works are, or were, substantially started.
- ‘(2) Despite section 3.5.21(1), the development approval for the material change of use lapses on 30 March 2006 or at the end of the currency period, whichever is the later.
- ‘(3) However, the development approval does not lapse if the change of use happens before 30 March 2006 or the end of the currency period, whichever is the later.
- ‘(4) Sections 3.5.22 and 3.5.23 continue to apply for the development approval.
- ‘(5) For subsection (1)—
- works associated with the change of use* include works, including, for example, demolishing, excavating or filling, carried out to prepare premises for carrying out other works associated with the material change of use.’.

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

- (1) Schedule 8, part 1, table 4, item 5, ‘Operational work that is’—

*omit, insert—*

‘Operational work, other than excluded work, that is’.

- (2) Schedule 8, part 1, table 4, item 5(b)(ii), ‘, other than under an allocation notice under the *Coastal Protection and Management Act 1995*’—

*omit.*

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

Schedule 8A, table 1, item 1—

*insert—*

‘(e) operational work mentioned in schedule 8, part 1, table 4, item 5(b)(vi).’.

**145 Amendment of sch 9 (Development that is exempt from assessment against a planning scheme)**

- (1) Schedule 9, table 4, item 3, ‘section 100’—

*omit, insert—*

‘section 169’.

- (2) Schedule 9, table 4, item 4, ‘section 150’—

*omit, insert—*

‘section 260’.

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

Schedule 10—

*insert—*

‘*excluded work*—

- 1 *Excluded work*, for schedule 8, part 1, table 4, item 5, means maintenance work on a lawful work.
- 2 *Excluded work*, for schedule 8, part 1, table 4, item 5(b)(i), (iii) and (ix), also means—









*liabilities* includes liabilities incurred as trustee of the trust fund.

*trust fund* means the trust fund under section 23.’.

## **Part 8                      Amendment of Mineral Resources Act 1989**

### **154    Act amended in pt 8**

This part amends the *Mineral Resources Act 1989*.

### **155    Amendment of s 64A (Issue of certificate of public notice)**

Section 64A(1)(b)—

*omit, insert—*

‘(b) either—

- (i) under the Environmental Protection Act, the application for the relevant environmental authority (mining claim) is a code compliant application and the environmental authority has been issued;<sup>90</sup> or
- (ii) under the Environmental Protection Act, the application for the relevant environmental authority (mining claim) is a non-code compliant application and the draft environmental authority for the non-code compliant application has, under the Environmental Protection Act, section 175,<sup>91</sup> been given to the mining registrar; and’.

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<sup>90</sup> See the Environmental Protection Act, section 164 (Automatic issuing of code compliant authority if no relevant mining claim or mining lease).

<sup>91</sup> Environmental Protection Act, section 175 (Obligation to prepare draft environmental authority)



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**‘3 Act binds all persons**

- ‘(1) This Act binds all persons, including the State, and, to the extent the legislative power of the Parliament permits, the Commonwealth and the other States.
- ‘(2) Nothing in this Act makes the Commonwealth, the State or another State liable to be prosecuted for an offence.’.

**159 Amendment of s 3A (Territorial application of Act)**

Section 3A, ‘Queensland’—

*omit, insert—*

‘the State’.

**160 Amendment of s 5 (How object is to be achieved)**

Section 5, ‘Queensland’—

*omit, insert—*

‘the State’.

**161 Amendment of s 29 (Dedication of protected areas)**

Section 29(1), after ‘State land’—

*insert—*

‘or a forest reserve that is subject to a lease under the *Land Act 1994*’.

**162 Amendment of s 30 (Revocation of State forests and timber reserves)**

Section 30(2), ‘14 sitting days’—

*omit, insert—*

‘28 days’.

**163 Amendment of s 32 (Revocation of protected areas)**

Section 32(2), ‘14 sitting days’—

*omit, insert—*

‘28 days’.

**164 Amendment of s 33 (Amalgamation etc. of protected areas)**

Section 33(2), ‘14 sitting days’—

*omit, insert—*

‘28 days’.

**165 Amendment of s 53 (Proposal to declare World Heritage management area)**

Section 53(1), ‘Queensland’—

*omit, insert—*

‘the State’.

**166 Amendment of s 56 (Revocation of World Heritage management area)**

Section 56(2), ‘14 sitting days’—

*omit, insert—*

‘28 days’.

**167 Amendment of s 57 (Proposal to declare international agreement area)**

Section 57(1), ‘Queensland’—

*omit, insert—*

‘the State’.

**168 Amendment of s 70E (Revocation of forest reserves)**

Section 70E(2), ‘14 sitting days’—

*omit, insert—*

‘28 days’.

**169 Amendment of s 74 (Management principles of international wildlife)**

Section 74(b), ‘Queensland’—

*omit, insert—*

‘the State’.

**170 Amendment of s 83 (Property in protected animals)**

Section 83(1), ‘and sections 85 and 86’—

*omit, insert—*

‘, sections 85 and 86 and the provisions of any captive breeding agreement’.

**171 Amendment of s 84 (Property in protected plants)**

Section 84(1), ‘and section 86’—

*omit, insert—*

‘, section 86 and the provisions of any captive breeding agreement’.

**172 Replacement of s 88 (Restriction on taking etc. protected animals)**

Section 88—

*omit, insert—*

**‘88 Restrictions on taking protected animal and keeping or use of unlawfully taken protected animal**

‘(1) This section—

(a) is subject to section 93; and

(b) does not apply to the taking of protected animals in a protected area.<sup>94</sup>

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94 Section 93 (Aborigines’ and Torres Strait Islanders’ rights to take etc. protected wildlife)

For the taking of protected animals in protected areas, see section 62 (Restriction on taking etc. of cultural and natural resources of protected areas).

‘(2) A person must not take a protected animal unless the person is an authorised person or the taking is authorised under this Act.

Maximum penalty—

- (a) for a class 1 offence—3 000 penalty units or 2 years imprisonment; or
- (b) for a class 2 offence—1 000 penalty units or 1 year’s imprisonment; or
- (c) for a class 3 offence—225 penalty units; or
- (d) for a class 4 offence—100 penalty units.

‘(3) It is a defence to a charge of taking a protected animal in contravention of subsection (1) to prove that—

- (a) the taking happened in the course of a lawful activity that was not directed towards the taking; and
- (b) the taking could not have been reasonably avoided.

‘(4) Subsection (3) does not allow a person to keep or use the animal.

‘(5) A person must not keep or use an animal that is either of the following unless the person is an authorised person or the keeping or use is authorised under this Act—

- (a) a protected animal if, at any time, it has been taken and the taking was not authorised under this Act or a law of another State;
- (b) a descendant of an animal mentioned in paragraph (a).

Maximum penalty—

- (a) for a class 1 offence—3 000 penalty units or 2 years imprisonment; or
- (b) for a class 2 offence—1 000 penalty units or 1 year’s imprisonment; or
- (c) for a class 3 offence—225 penalty units; or
- (d) for a class 4 offence—100 penalty units.

‘(6) In this section—



**authorised person** means a person as follows performing functions under this Act in relation to the protected animal—

- (a) the chief executive;
- (b) a conservation officer, public service officer or other employee of the department acting under the chief executive's authority.

**Class 1 offence** means an offence against this section that involves—

- (a) 1 or more animals that are presumed extinct or endangered wildlife; or
- (b) 5 or more animals that are vulnerable wildlife; or
- (c) 10 or more animals that are rare wildlife; or
- (d) 1 or more echidna, koala or platypus.

**Class 2 offence** means an offence against this section that is not a class 1 offence and involves—

- (a) 3 or 4 animals that are vulnerable wildlife; or
- (b) 4 or more, but no more than 9, animals that are rare wildlife; or
- (c) 10 or more animals that are common wildlife.

**Class 3 offence** means an offence against this section that is not a class 1 or class 2 offence and involves—

- (a) 1 or 2 animals that are vulnerable wildlife; or
- (b) 2 or 3 animals that are rare wildlife; or
- (c) 5 or more, but less than 10, animals that are common wildlife.

**Class 4 offence** means an offence against this section other than a class 1, 2 or 3 offence.

**'88A Restriction on keeping or use of lawfully taken protected animal**

- (1) Subject to section 93, a person, other than an authorised person, must not keep or use a protected animal that is either

of the following unless the keeping or use is authorised under this Act—

- (a) a protected animal, if the animal has, at any time, been taken and the taking was authorised under this Act or a law of another State;
- (b) a descendant of an animal mentioned in paragraph (a).

Maximum penalty—

- (a) generally—1 000 penalty units; or
- (b) if a circumstance mentioned in subsection (2) applies—100 penalty units.

‘(2) For subsection (1), the circumstances are that—

- (a) in the 12 months before the commission of the offence, the person held a licence, permit or other authority (the *former authority*) under this Act and—
  - (i) the former authority is no longer in force; and
  - (ii) had the former authority still been in force, the offence would not have been committed; and
  - (iii) the former authority ceased to be in force for a reason other than its cancellation or suspension; and
  - (iv) an application to renew the former authority has not been refused; or
- (b) the offence only relates to moving the animal.

‘(3) In this section—

*authorised person* means a person as follows performing functions under this Act in relation to the protected animal—

- (a) the chief executive;
- (b) a conservation officer, public service officer or other employee of the department acting under the chief executive’s authority.

**‘88B    Offence to keep or use native wildlife reasonably suspected to have been unlawfully taken**

‘(1) A person must not keep or use native wildlife if a reasonable person in the person’s circumstances ought to have suspected that the wildlife may have been unlawfully taken unless—

- (a) the person is an authorised person; or
- (b) the State has, under this Act, disposed of the native wildlife to the person.<sup>95</sup>

Maximum penalty—

- (a) if the wildlife ought to have been suspected to have been taken in contravention of section 88(2), 89 or 97<sup>96</sup>—the maximum penalty under that section that applies to an unlawful taking of the wildlife; or
- (b) if the wildlife ought to have been suspected to have been taken in contravention of a law of another State—the maximum penalty under that law that applies to the unlawful taking of the wildlife.

‘(2) If a person is charged with an offence against subsection (1), it is a defence to the charge if the person satisfies the court that the person had no reasonable grounds for suspecting the wildlife was unlawfully taken.

‘(3) In this section—

*authorised person* means a person as follows performing functions under this Act in relation to the native wildlife—

- (a) the chief executive;
- (b) a conservation officer, public service officer or other employee of the department acting under the chief executive’s authority.

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95 See sections 171 (Disposal of cultural or natural resources and protected wildlife owned by State) and 172 (Disposal of wildlife etc. not owned by State).

96 Section 88 (Restrictions on taking protected animal and keeping or use of unlawfully taken protected animal), 89 (Restriction on taking etc. protected plants) and 97 (Restriction on taking etc. of native wildlife in areas of major interest and critical habitats)

***unlawfully taken*** means taken in contravention of section 88(2), 89 or 97 or of a law of another State.’.

**173 Amendment of s 91 (Prohibition on release etc. of international and prohibited wildlife)**

(1) Section 91(1)—

*omit, insert—*

‘(1) A person, other than an authorised person, must not, unless authorised under this Act—

- (a) abandon or release international or prohibited wildlife into the wild; or
- (b) introduce international or prohibited wildlife into the State; or
- (c) keep or use international or prohibited wildlife that, in contravention of paragraph (b), has been introduced into the State.

Maximum penalty—3 000 penalty units or 2 years imprisonment.

‘(2) A person, other than an authorised person, must not otherwise keep or use international or prohibited wildlife unless—

- (a) the wildlife is dead and, if the wildlife is international wildlife, an approved tag is, under a regulation, attached to the animal or the part of the animal that is being kept or used; or
- (b) the keeping or use is the keeping or use of milk obtained from prohibited wildlife; or
- (c) the keeping or use is otherwise authorised under this Act.

Maximum penalty—100 penalty units.’.

(2) Section 91(2)—

*renumber* as section 91(3).

**174 Amendment of s 95 (Payment of conservation value)**

Section 95(8)—

*insert—*

‘(c) takes the wildlife under a captive breeding agreement and pays the amount that the agreement provides must be paid for the taking of the wildlife.’.

**175 Replacement of pt 5, div 7, hdg (General)**

Part 5, division 7, heading—

*omit, insert—*

**‘Division 7 Provisions for land-holders’.****176 Insertion of new pt 5, div 8**

Part 5—

*insert—*

**‘Division 8 Captive breeding agreements and captive breeding for conservation****‘Subdivision 1 Preliminary****‘100A Main purpose of div 8 and its achievement**

‘(1) The main purpose of this division is to facilitate the conservation of native wildlife in the wild through captive breeding programs and the introduction of captive-bred wildlife into the wild.

‘(2) The purpose is achieved by—

(a) providing for agreements between the State and other entities about captive breeding; and

(b) authorise the taking of protected wildlife in the wild for use in captive breeding programs.

## ‘Subdivision 2      Captive breeding agreements

### ‘100B Minister’s power to enter into captive breeding agreement

‘(1) The Minister may, for the State, enter into an agreement (a *captive breeding agreement*) with someone else about captive breeding of protected wildlife to—

- (a) reintroduce it into the wild, in the State or elsewhere; or
- (b) otherwise ensure the survival in the wild of the protected wildlife or another species of wildlife.

‘(2) However, the agreement may provide for the reintroduction of the protected wildlife only if the Minister is satisfied—

- (a) suitable habitat exists, or will exist, for the wildlife at the place where it is to be released; and
- (b) threatening processes for the wildlife or its habitat will be minimised at the place.

‘(3) The agreement may be made even though no conservation plan or recovery plan has been made for the wildlife.

‘(4) In this section—

*captive breeding*, of protected wildlife, means doing, in the State or elsewhere, any of the following for a purpose mentioned in subsection (1)—

- (a) growing or propagating protected plants under controlled conditions;
- (b) breeding, hand-rearing or incubating protected animals in captivity;
- (c) removing eggs, sperm or other reproductive material from protected wildlife in captivity or the wild for embryo transfer, fertilisation, artificial insemination or incubation.

*protected wildlife* includes wildlife that, under a law of another State, is an equivalent (however called) of protected wildlife as defined under this Act.

**recovery plan**, for wildlife, is a document stating what research and management is necessary to stop the decline, support the recovery, or enhance the chance of long-term survival in the wild, of the wildlife.

*Example—*

a recovery plan made or adopted under the *Environment Protection and Biodiversity Act 1999* (Cwlth), section 269A<sup>97</sup>

**reproductive material**, of protected wildlife, means any part of the wildlife that is capable of, or contributes to, asexual or sexual reproduction.

*Examples of reproductive material of a plant—*

all or part of a bulb, rhizome, root, seed, stolon or tuber

### **‘100C Things a captive breeding agreement may provide for**

- ‘(1) A captive breeding agreement may do any of the following in relation to protected wildlife to which the agreement applies—
- (a) authorise, for this Act, a party to the agreement to—
    - (i) take the wildlife in a protected or other area; or
    - (ii) keep or use the wildlife;
  - (b) provide for the passing of property rights in relation to the wildlife to a party to the agreement.
- ‘(2) However, the authorisation is subject to section 100E.
- ‘(3) A captive breeding agreement may provide that wildlife that is the property of the State is, under the agreement, to pass to another party to the agreement.

### **‘100D Required provisions for captive breeding agreement**

- ‘(1) A captive breeding agreement must state or provide for each of the following—

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<sup>97</sup> *Environment Protection and Biodiversity Act 1999* (Cwlth), section 269A (Making or adopting a recovery plan)

- (a) the species of wildlife to which the agreement applies;
  - (b) how many of the wildlife are to be taken in the wild, their sex and place of taking;
  - (c) whether the conservation value or a stated different amount must be paid for any of the wildlife that, under the agreement, is to be taken in the wild;
  - (d) arrangements to be made to distinguish the wildlife from others of the same species;
  - (e) the taking of tissue samples of the wildlife for genetic typing;
  - (f) where the wildlife are to be kept;
  - (g) requirements for keeping stud books and other records;
  - (h) arrangements to be made for releasing the wildlife or their descendants or to dispose of any of the wildlife that are no longer suitable for breeding or release;
  - (i) how the agreement may be enforced or terminated;
  - (j) any other matter prescribed under a regulation.
- ‘(2) To remove any doubt, it is declared that subsection (1) does not limit section 100B(1).

**‘100E Restriction on the taking, under a captive breeding agreement, of wildlife in the wild**

‘A person who, under a captive breeding agreement, takes wildlife in the wild must carry a copy of the agreement while taking or moving the wildlife.<sup>98</sup>

Maximum penalty—50 penalty units.

**‘100F Additional provisions for termination of captive breeding agreement**

- ‘(1) The Minister may, by written notice to each other party to a captive breeding agreement, terminate the agreement if a

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98 See also section 99 (Offence to trespass—general).



party to the agreement is convicted of an offence against section 88, 88A or 89.<sup>99</sup>

- ‘(2) A regulation may terminate a captive breeding agreement.
- ‘(3) This section—
  - (a) applies despite any provision of a captive breeding agreement; and
  - (b) does not limit the ways in which a captive breeding agreement may be terminated.

### **‘100G Obligation to surrender protected wildlife on termination of captive breeding agreement**

- ‘(1) If a captive breeding agreement is terminated, the chief executive may give a written notice to any person who is, or who appears to be, in charge of protected wildlife that, under the agreement, is the property of the State, to surrender the wildlife to the State.
- ‘(2) The notice may be given even if the wildlife is being kept or used at a place outside the State.
- ‘(3) The person must comply with the notice.  
Maximum penalty—1 000 penalty units.
- ‘(4) This section does not limit—
  - (a) section 88, 88A or 89; or
  - (b) the State’s property in the wildlife; or
  - (c) a conservation officer’s powers in relation to the wildlife.

### **‘Subdivision 3 Chief executive’s power for captive breeding**

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<sup>99</sup> Section 88 (Restrictions on taking protected animal and keeping or use of unlawfully taken protected animal), 88A (Restriction on keeping or use of lawfully taken protected animal) or 89 (Restriction on taking etc. protected plants)

## **‘100H Powers**

‘The chief executive may take, keep or use protected wildlife for captive breeding or to give effect to a captive breeding agreement.’.

### **177 Amendment of s 112 (Conservation plans)**

Section 112(2)(c), ‘Queensland’—

*omit, insert—*

‘the State’.

### **178 Amendment of s 133 (Chief executive to keep register)**

(1) Section 133(1)(f) to (h)—

*renumber* as section 133(1)(g) to (i).

(2) Section 133(1)—

*insert—*

‘(f) captive breeding agreements that are in force; and’.

### **179 Amendment of s 135 (Chief executive may inquire into applications)**

(1) Section 135(2)(b), ‘or a Territory’—

*omit.*

(2) Section 135(2)(b), ‘or Territory’—

*omit.*

### **180 Insertion of new ss 152A and 152B**

After section 152—

*insert—*

#### **‘152A General powers for seized things**

‘(1) Having, under this part, seized a thing, a conservation officer may do 1 or more of the following—

- (a) move it from the place where it was seized (the *place of seizure*);
- (b) leave it at the place of seizure, but take reasonable action to restrict access to it;

*Examples of restricting access to a thing—*

- 1 brand, mark, seal, tag or otherwise identify it to show access to it is restricted
- 2 sealing the entrance to a room where the thing is situated and marking it to show access to it is restricted

- (c) for equipment—make it inoperable;

*Example of making equipment inoperable—*

dismantling equipment or removing a component of equipment without which the equipment is not capable of being used

- (d) for wildlife, 1 or more of the following as is appropriate to ensure its survival—
  - (i) take it to a place the conservation officer considers appropriate;
  - (ii) give it accommodation, food, rest, water or other appropriate living conditions;
  - (iii) if the conservation officer reasonably believes it requires veterinary or other treatment—arrange for the treatment;
  - (iv) leave it at the place of seizure and take any action mentioned in subparagraphs (i) to (iii);
  - (v) if it is left at the place of seizure—give the person from whom it was seized a direction to look after, or continue to look after, the wildlife;
  - (vi) if the wildlife is left at the place of seizure and the person from whom it was seized does not comply with a direction under subparagraph (v)—take any action mentioned in subparagraphs (i) to (iii);

‘(2) If—

- (a) the seized thing is an animal left at the place of seizure; and

- (b) the person from whom it was seized is given a direction under subsection (1)(d)(v);

for the *Animal Care and Protection Act 2001*, the person is taken to be, or continue to be, the person in charge of the animal.

### **‘152B Offence to tamper with seized thing**

- ‘(1) This section applies in relation to a thing seized under this part.
- ‘(2) However, this section does not apply to a person from whom an animal was seized if the person—
- (a) is complying with a direction under section 152A(1)(d)(v); and
- (b) does not, without the written authority of a conservation officer, take the animal from the place where it was seized.
- ‘(3) A person, other than a conservation officer or a person authorised by a conservation officer for the purpose, must not do, or attempt to do, any of the following unless the person has a reasonable excuse—
- (a) tamper with the thing or something done under section 152A(1)(b) to restrict access to it;
- (b) enter, or be at, the place where the thing is being kept;
- (c) move the thing from the place where it is being kept;
- (d) have the thing in the person’s possession.
- Maximum penalty—500 penalty units.’.

### **181 Amendment of s 160 (Evidentiary provisions)**

- (1) Section 160(5)(d), ‘indigenous to Australia or Queensland’—  
*omit, insert—*  
‘indigenous to Australia or indigenous to the State’.
- (2) Section 160—

*insert—*

‘(7) In this section—

***indigenous to the State*** in relation to wildlife, means—

- (a) wildlife that was not originally introduced to the State by human intervention (other than wildlife introduced before the year 1600); or
- (b) a migratory animal that periodically or occasionally migrates to, or visits, the State;

but does not include wildlife that was introduced to another part of Australia by human intervention after the year 1600 and later spread naturally to the State.’

## **182 Amendment of s 164 (Indictable and summary offences)**

Section 164—

*insert—*

‘(3) To remove any doubt, it is declared that a class 2, 3 or 4 offence under section 88 is a summary offence.’

## **183 Amendment of s 165 (Proceedings for indictable offences)**

Section 165(4)—

*omit, insert—*

‘(4) The maximum penalty of imprisonment that may be summarily imposed for an indictable offence is 1 year’s imprisonment.’

## **184 Amendment of s 173A (Definitions for div 2)**

Section 173A, definition *nominated offence*, after ‘88,’—

*insert—*

‘88A.’

**185 Insertion of new ss 173P and 173Q**

Part 11—

*insert—*

**‘173P Chief executive’s general powers**

- ‘(1) The chief executive may do any thing the chief executive reasonably considers is necessary to administer, or achieve the object of, this Act,<sup>100</sup> including, for example—
- (a) take, keep, use, or interfere with, any wildlife in a protected or other area; or
  - (b) interfere with the cultural or natural resources of a protected area or forest reserve.
- ‘(2) To remove any doubt, it is declared that the chief executive does not require a licence, permit or authority under this Act to carry out an activity authorised under subsection (1).

**‘173Q Publication of notice for revocation under s 30, 32, 56 or 70E or particular amalgamations under s 33**

- ‘(1) This section applies for—
- (a) a revocation under section 30, 32, 56 or 70E; or
  - (b) an amalgamation under section 33 that involves a change in the class, or the boundaries, of a protected area.
- ‘(2) Within 10 days after the notice of motion for the revocation or amalgamation is given, the chief executive must publish notice of the proposed revocation or amalgamation in—
- (a) a newspaper circulating in the locality of the relevant area; and
  - (b) a newspaper circulating generally throughout the State.
- ‘(3) The notice must state—
- (a) the name of the relevant area; and
  - (b) for a revocation—

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100 See section 5 (How object is to be achieved).

- (i) whether all or part of the relevant area is proposed to be revoked; and
  - (ii) if only part of the relevant area is proposed to be revoked—a description, by map or otherwise, of the part of the relevant area proposed to be revoked; and
  - (c) for an amalgamation—the proposed change in the class, or the boundaries, of a protected area.
- ‘(4) In this section—  
*relevant area* means the State forest, timber reserve, protected area, World Heritage management area or forest reserve the subject of the motion.’.

**186 Amendment of s 175 (Regulation-making power)**

- (1) Section 175(2)(p)—  
*renumber* as section 175(2)(q).
- (2) Section 175(2)—  
*insert*—  
 ‘(p) authorising the taking, keeping or use of a protected animal;’.

**187 Insertion of new pt 12, div 1, hdg**

Part 12, before section 181—  
*insert*—

**‘Division 1                      Savings and transitional provisions for Act No. 20 of 1992’.**

**188 Insertion of new pt 12, div 2**

After section 183—  
*insert*—

**‘Division 2                      Savings and transitional provisions  
for Nature Conservation and Other  
Legislation Amendment Act 2000**

**‘184      Provision to allow beekeeping in particular former  
forest reserves until 2025**

- ‘(1) This section applies if a forest reserve prescribed under a regulation is dedicated as a national park or national park (recovery).
- ‘(2) Despite sections 15 and 34,<sup>101</sup> a regulation may, until 31 December 2024, authorise a person to take, use, keep or interfere with cultural or natural resources for an apiary in the national park or national park (recovery).
- ‘(3) This section expires at the beginning of 1 January 2025.

**‘185      Provision for commercial activity permits for former  
forest reserves**

- ‘(1) This section applies if—
  - (a) land in a forest reserve is dedicated as a protected area; and
  - (b) immediately before the dedication, a person was, under a commercial activity permit (the *former permit*) granted under the *Forestry Act 1959*, carrying out commercial activities on the land.
- ‘(2) On the dedication—
  - (a) the former permit ceases to be a permit under the *Forestry Act 1959* and becomes a commercial activity permit under this Act to carry out the activities in the protected area; and
  - (b) the holder of the former permit becomes the holder of the commercial activity permit; and

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101 Sections 15 (Management of protected areas) and 34 (Leases etc. over protected areas)



- (c) the commercial activity permit continues, subject to this Act, for the balance of the term of the former permit.
- ‘(3) To remove any doubt, it is declared that subsection (2) applies even if the carrying out of the commercial activities under the former permit is not consistent with the management principles for the protected area.
- ‘(4) However, the grounds on which the chief executive may refuse an application to renew the commercial activity permit include the ground that the carrying out of the commercial activities under the permit is not consistent with the management principles or a management plan for the protected area.’.

### 189 Amendment of schedule (Dictionary)

- (1) Schedule, definition *indigenous to Queensland*—  
*omit.*
- (2) Schedule—  
*insert—*  
**‘captive breeding agreement** see section 100B(1).  
**State** includes Territory.’.
- (3) Schedule, definition *State land*, ‘Queensland’—  
*omit, insert—*  
‘the State’.
- (4) Schedule, definition *use*, after ‘sell,’—  
*insert—*  
‘give away,’.

## Part 10**Amendment of Nature Conservation Amendment Act 2004**

### **190 Act amended in pt 10**

This part amends the *Nature Conservation Amendment Act 2004*.

### **191 Insertion of new s 7A**

After section 7—

*insert—*

### **‘7A Amendment of s 88 (Restrictions on taking protected animal and keeping or use of unlawfully taken protected animal)**

‘(1) Section 88(6), definition *Class 1 offence*, paragraph (a), ‘presumed extinct’—

*omit, insert—*

‘extinct in the wild’.

‘(2) Section 88(6), after ‘vulnerable’—

*insert—*

‘or near threatened’.’.

### **192 Omission of s 11 (Insertion of new pt 12, div 1, hdg)**

Section 11—

*omit.*

### **193 Amendment of s 12 (Insertion of new pt 12, div 2)**

(1) Section 12, heading, ‘div 2’—

*omit, insert—*

‘div 3’.

(2) Section 12, inserted division 2 heading, ‘Division 2’—

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*omit, insert—*

‘Division 3’.

- (3) Section 12, inserted section 184—  
*renumber* as inserted section 186.