



Queensland

Environmental Protection and Other Legislation Amendment Act 2007

Act No. 56 of 2007



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Environmental Protection and Other Legislation Amendment Act 2007

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Queensland

Environmental Protection and Other Legislation Amendment Act 2007

Act No. 56 of 2007

**An Act to amend Acts administered by the Minister for
Sustainability, Climate Change and Innovation**

[Assented to 9 November 2007]

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 2007*.

2 Commencement

Sections 4 and 26 commence 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 Omission of ch 6, pt 3 (Transitional provisions for Beach Protection Legislation Amendment Act 2003)

Chapter 6, part 3—
omit.

5 Amendment of schedule (Dictionary)

Schedule, definition *tidal water*, paragraph (b), ‘a regulation’—

registered operator for the development approval has agreed in writing to the addition, change or cancellation.’.

(4) Section 73C(2A) to (5)—

renumber as section 73C(3) to (6).

(5) Section 73C—

insert—

‘(7) Subsection (6) does not apply if the condition has been added, changed, or cancelled under subsection (3).’.

9 Insertion of new s 73GA

Chapter 4, part 2—

insert—

‘73GA Registration certificate expires if new operator registered

‘(1) This section applies to a registration certificate (the *existing registration certificate*) for a continuing chapter 4 activity if—

(a) the registered operator (the *existing registered operator*) disposes of the operator’s business to someone else; and

(b) another registration certificate for the activity (the *new registration certificate*) is given to a person other than the existing registered operator.

‘(2) Unless it is sooner cancelled, suspended or surrendered, the existing registration certificate expires when the new registration certificate takes effect under section 73G.

‘(3) This section does not apply if section 73HD applies.’.

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

Chapter 4, part 3—

omit, insert—

‘Part 3 Amending registration

‘Division 1 Grounds for amending registration certificates

‘73H Amendment to correct error

‘The administering authority may amend a registration certificate to correct a clerical or formal error if—

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

‘73HA Amendment by agreement

‘The administering authority may amend a registration certificate if the registered operator has agreed in writing to the amendment.

‘73HB Amendment to ensure consistency with code of environmental compliance

‘The administering authority may amend a registration certificate to ensure the detail on the certificate is consistent with a code of environmental compliance applying to a chapter 4 activity stated in the certificate.

‘73HC Amendment for registration of new activity

‘(1) This section applies if—

- (a) a registered operator applies for a registration certificate for a new chapter 4 activity; and
- (b) the administering authority is satisfied—
 - (i) registration should be granted for the new activity; and

- (ii) the new activity will be carried out, with the activities under an existing registration certificate held by the operator, as a single integrated operation for section 73F.
- ‘(2) The administering authority may, instead of giving the operator a registration certificate for the new chapter 4 activity, amend the existing registration certificate to include the activity.

‘73HD Amendment for removing registration of continuing chapter 4 activity

- ‘(1) This section applies if—
- (a) a continuing chapter 4 activity and another chapter 4 activity are stated in a registration certificate (an *existing registration certificate*); and
 - (b) the registered operator (the *existing registered operator*) disposes of the operator’s business, or part of the business, to someone else; and
 - (c) another registration certificate for the continuing chapter 4 activity—
 - (i) is given to a person other than the existing registered operator; and
 - (ii) has taken effect under section 73G.
- ‘(2) The administering authority may amend the existing registration certificate to remove the continuing chapter 4 activity.

‘Division 2 Amendment of registration certificates

‘73HE How a registration certificate is to be amended

‘If the administering authority amends a registration certificate under this part, the authority must, within 10 business days—

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

11 Amendment of s 73O (Surrendering a registration certificate)

- (1) Section 73O(6)(b)(iv), ‘environmental management program’—
omit, insert—
‘transitional environmental program’.
- (2) Section 73O—
insert—
- ‘(7) Also, the administering authority may refuse the surrender if the registered operator has been given an annual notice and the notice has not been complied with.’.

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

- Section 151(1)(a) and (2)(b)(i), from ‘that type’ to ‘compliant authority’—
omit, insert—
‘mining activities under that type of authority’.

13 Amendment of s 154 (General requirements for application)

- Section 154(1)(c)(ii)(A), from ‘that type’ to ‘compliant authority’—
omit, insert—
‘mining activities under that type of authority’.

14 Amendment of s 248 (Notice of EIS requirement)

Section 248—

insert—

- ‘(c) for an amendment application for an environmental authority (exploration) or environmental authority (mineral development)—that part 5 applies, with necessary changes, to the application, as if it were an application for that type of environmental authority; and
- (d) for an amendment application for an environmental authority (mining lease)—that part 6 applies, with necessary changes, to the application, as if it were an application for that type of environmental authority.’.

15 Amendment of s 260A (Additional requirement for transfer application for code compliant authority if no amendment application made)

Section 260A(2)(a), from ‘that type’ to ‘compliant authority’—

omit, insert—

‘mining activities under that type of authority’.

16 Amendment of s 316 (Annual fee and return)

(1) Section 316(3)—

insert—

‘(ba) that the annual fee payable under the notice must be paid to the authority within a stated reasonable time, of at least 20 business days, after the day the notice is given; and’.

(2) Section 316(3)(ba) and (c)—

renumber as section 316(c) and (d).

(3) Section 316—

insert—

‘(6) A failure to give the notice by the time stated in subsection (2) does not invalidate or otherwise affect the validity of the notice.’.

17 Amendment of s 322 (When environmental audit required)

Section 322(1)(c)—

omit, insert—

‘(c) a person is, or has been, contravening a regulation, an environmental protection policy or a transitional environmental program;’.

18 Amendment of s 338 (Criteria for deciding draft program)

Section 338(1)(a)—

omit, insert—

‘(a) must comply with any relevant regulatory requirement; and’.

19 Amendment of s 346 (Effect of compliance with program)

(1) Section 346(1), ‘environmental management program’—

omit, insert—

‘transitional environmental program’.

(2) Section 346(2)(a) to (c)—

omit, insert—

‘(a) a regulation; or

(b) an environmental protection policy; or

(c) an environmental authority held by the holder; or

(d) a development condition of a development approval; or

(e) a standard environmental condition of a code of environmental compliance for a chapter 4 activity.’.

(3) Section 346(3)(a) to (b)—

omit, insert—

- (a) a regulation; or
- (b) an environmental protection policy; or
- (c) a condition of an environmental authority held by the holder; or
- (d) a development condition of a development approval; or
- (e) a standard environmental condition of a code of environmental compliance for a chapter 4 activity.’.

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

- (1) Section 358(b), ‘an environmental management program’—

omit, insert—

‘a transitional environmental program’.

- (2) Section 358(d)—

insert—

‘(ix) a regulation.’.

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

- (1) Section 430(2), penalty, paragraph (a) and (3), penalty, paragraph (a), from ‘a non-code’ to ‘chapter 5’—

omit, insert—

‘an environmental authority (mining activities)’.

- (2) Section 430(2), penalty, paragraph (b) and (3), penalty, paragraph (b), from ‘a code’ to ‘chapter 4A’—

omit, insert—

‘an environmental authority (mining activities)’.

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

- (1) Section 441, heading, ‘policies’—

omit, insert—

‘policy or regulation’.

- (2) Section 441(1) and (2), ‘an environmental protection policy’—

omit, insert—

‘a provision of an environmental protection policy or a regulation’.

- (3) Section 441(3)—

omit, insert—

- ‘(3) For subsections (1) and (2), contravention of a provision of an environmental protection policy or a regulation is a class 1, 2 or 3 environmental offence only if the policy or regulation declares contravention of the provision to be an offence of that class.’.

23 Amendment of s 442 (Offence of releasing prescribed contaminant)

- (1) Section 442(1), definition *prescribed contaminant*, after ‘policy’—

insert—

‘or a regulation’.

- (2) Section 442(1) and (2)—

relocate and renumber as section 442(2) and (1).

24 Amendment of s 498 (Notice of defence)

Section 498—

insert—

- ‘(2) If the person has not given the written notice under subsection (1), the court may, on the application of the prosecution, make either or both of the following orders—
- (a) an order to adjourn the hearing;

- (b) an order that the person pay the prosecution the costs incurred by the prosecution because of the application for the adjournment.’.

25 Amendment of s 503 (Recovery of costs of investigation)

- (1) Section 503(1)(b)—

omit, insert—

‘(b) the court finds the prosecution has reasonably incurred costs and expenses in investigating the offence; and’.

- (2) Section 503(1)(c) and (2), ‘administering authority’—

omit, insert—

‘prosecution’.

- (3) Section 503—

insert—

‘(1A) Without limiting subsection (1)(b), costs and expenses in investigating the offence may include costs and expenses of taking any sample or conducting any inspection, test, measurement or analysis during the investigation.’.

- (4) Section 503(2), ‘the authority’—

omit, insert—

‘the prosecution’.

- (5) Section 503(1A) to (3)—

renumber as section 503(2) to (4).

26 Amendment of s 514 (Devolution of powers)

- (1) Section 514(6), ‘lower, but not a higher, fee’—

omit, insert—

‘different fee, whether higher or lower,’.

- (2) Section 514—

insert—

‘(6A) Despite subsection (5)(b), a local government may make a local law, for carrying out or giving effect to the devolved matter, that is inconsistent with a regulation if the local law imposes requirements in relation to environmental nuisance.’.

27 Amendment of s 520 (Dissatisfied person)

(1) Section 520(1)(h)—

omit.

(2) Section 520(1)(i) to (t)—

renumber as section 520(1)(h) to (s).

28 Amendment of s 551 (Definitions for pt 2)

(1) Section 551, definition *applicant*, ‘an EMP’—

omit, insert—

‘a TEP’.

(2) Section 551, definition *EMP submission*—

omit, insert—

‘**TEP submission** means a submission for approval of, or an approval of an amendment to, a transitional environmental program.’.

29 Amendment of s 580 (Regulation-making power)

(1) Section 580(2), ‘A regulation may’—

omit, insert—

‘Without limiting subsection (1), a regulation may’.

(2) Section 580(2)—

insert—

‘(u) a matter relating to an environmental value, other than a matter mentioned in this Act, that must be considered to decide an application relating to an activity that adversely affects, or may adversely affect, the environmental value;

- (v) protecting an environmental value by requirements for labelling particular products.’.

30 Insertion of new ch 13, pt 7, div 4

Chapter 13, part 7—

insert—

‘Division 4 Provisions inserted under Environmental Protection and Other Legislation Amendment Act 2007

‘641A Definition for div 4

‘In this division—

commencement means the commencement of the *Environmental Protection and Other Legislation Amendment Act 2004*, part 3.

‘641B Non-standard environmental authority taken to be environmental authority for level 1 mining project

- ‘(1) This section applies to a non-standard environmental authority (mining activities) that was in force under the Act immediately before the commencement and has remained in force since the commencement.
- ‘(2) The authority is taken to be an environmental authority (mining activities) for a level 1 mining project.

‘641C Standard environmental authority taken to be environmental authority for level 2 mining project

- ‘(1) This section applies to a standard environmental authority (mining activities) that was in force under the Act immediately before the commencement and has remained in force since the commencement.
- ‘(2) The authority is taken to be an environmental authority (mining activities) for a level 2 mining project.’.

31 Insertion of new ch 13, pt 9

Chapter 13—

insert—

**‘Part 9 Transitional provisions for
Environmental Protection and
Other Legislation Amendment
Act 2007**

**‘644 References to environmental management programs
or draft programs**

- ‘(1) A reference to an environmental management program in an Act or document is taken, if the context permits, to be a reference to a transitional environmental program.
- ‘(2) A reference to a draft environmental management program in an Act or document is taken, if the context permits, to be a reference to a draft transitional environmental program.’.

32 Amendment of sch 3 (Dictionary)

- (1) Schedule 3, definitions *EMP submission*, *environmental management program*, *EPP requirement*, *standard environmental authority (mining activities)*—

omit.

- (2) Schedule 3—

insert—

‘*continuing chapter 4 activity* means a chapter 4 activity—

- (a) that is carried out by a registered operator who proposes to dispose of the operator’s business to someone else (the ***proposed buyer***); and
- (b) for which the proposed buyer applies for a registration certificate.

regulatory requirement means a requirement under an environmental protection policy or a regulation for the administering authority to—

- (a) grant or refuse to grant, or follow stated procedures for evaluating, any of the following applications—
 - (i) an application under chapter 4;
 - (ii) an environmental authority application;
 - (iii) an application for approval of a transitional environmental program; or
- (b) impose, change or cancel a condition on a development approval for a chapter 4 activity, an environmental authority or an approval of a transitional environmental program; or
- (c) consider a matter for issuing an environmental protection order.

TEP submission, for chapter 12, part 2, see section 551.

transitional environmental program means a transitional environmental program approved under chapter 7, part 3.’.

- (3) Schedule 3, definition *environmental requirement*, paragraph (b) and definition *standard criteria*, paragraph (g)(ii), ‘an environmental management program’—

omit, insert—

‘a transitional environmental program’.

- (4) Schedule 3, definition *residual risks*, ‘a proposed certified rehabilitated area for’—

omit, insert—

‘an area within’.

Part 4

Amendment of Nature Conservation Act 1992

33 Act amended in pt 4

This part amends the *Nature Conservation Act 1992*.

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

Section 65(1), from ‘class—’—

omit, insert—

‘class, the later dedication or declaration revokes the earlier dedication or declaration of the area or the part of the area to which the dedication or declaration relates.’.

35 Insertion of new s 88C

After section 88B—

insert—

‘88C Restrictions relating to flying-foxes and flying-fox roosts

- ‘(1) A person must not destroy a flying-fox roost unless the person is an authorised person or the destruction is authorised under this Act.

Maximum penalty—1000 penalty units or 1 year’s imprisonment.

- ‘(2) A person must not drive away, or attempt to drive away, a flying-fox from a flying-fox roost unless the person is an authorised person or the driving away is authorised under this Act.

Maximum penalty—1000 penalty units or 1 year’s imprisonment.

- ‘(3) A person must not disturb a flying fox in a flying-fox roost unless the person is an authorised person or the disturbance is authorised under this Act.

Maximum penalty—100 penalty units.

- ‘(4) This section does not apply if the flying-fox roost is in a protected area.

Note—

For interfering with natural resources in protected areas, see section 62 (Restriction on taking etc. of cultural and natural resources of protected areas).

‘(5) Also, this section does not apply for an Aborigine or Torres Strait Islander taking, using or keeping a flying-fox under section 93.

‘(6) In this section—

breeding includes gestating.

drive away, a flying-fox from a flying-fox roost, means—

- (a) cause the flying-fox to move away from the roost; or
- (b) if the flying-fox has moved away from the roost, deter the flying-fox from returning to the roost.

Examples of ways of driving away a flying-fox—

using sound, light, smoke, electric current or chemicals

flying-fox means a protected animal of the genus *Pteropus*.

flying-fox roost means a tree or other place where flying-foxes congregate from time to time for breeding or rearing their young.’

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

(1) Section 89(1), after ‘protected plant’—

insert—

‘that is in the wild’.

(2) Section 89(1), penalty, and (4), penalty—

omit, insert—

‘Maximum penalty—

- (a) for a class 1 offence—3000 penalty units or 2 years imprisonment; or
- (b) for a class 2 offence—1000 penalty units or 1 year’s imprisonment; or
- (c) for a class 3 offence—225 penalty units; or
- (d) for a class 4 offence—165 penalty units.’

(3) Section 89(5)—

omit, insert—

‘(5) In this section—

class 1 offence means an offence against this section that involves—

- (a) 1 or more plants that are extinct in the wild or endangered wildlife; or
- (b) 5 or more plants that are vulnerable or near threatened wildlife; or
- (c) 10 or more plants that are rare wildlife.

class 2 offence means an offence against this section that is not a class 1 offence and involves—

- (a) 3 or 4 plants that are vulnerable or near threatened wildlife; or
- (b) 4 or more, but no more than 9, plants that are rare 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 plants that are vulnerable or near threatened wildlife; or
- (b) 2 or 3 plants that are rare wildlife.

class 4 offence means an offence against this section other than a class 1, 2 or 3 offence.’.

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

(1) Section 90, from ‘plant’ to ‘wildlife’—

omit, insert—

‘plant,’.

(2) Section 90, penalty—

omit, insert—

‘Maximum penalty—

- (a) for a class 1 offence—1000 penalty units; or

(b) for a class 2 offence—165 penalty units.’.

(3) Section 90—

insert—

‘(2) In this section—

class 1 offence means an offence against this section that involves 1 or more plants that are threatened, rare or near threatened wildlife.

class 2 offence means an offence against this section other than a class 1 offence.’.

38 Amendment of s 111 (Management plans)

(1) Section 111(2) to (4)—

omit, insert—

‘(2) However, the Minister is not required to prepare a management plan for the area (the ***newly dedicated protected area***) if—

(a) the area is dedicated or declared as a protected area in connection with any of the following changes to a protected area (an ***existing protected area***) for which a management plan (an ***existing management plan***) is in force—

- (i) renaming the existing protected area;
- (ii) changing the class of the existing protected area;
- (iii) adding an area to the existing protected area;
- (iv) removing an area from the existing protected area;
- (v) amalgamating the existing protected area with another protected area;
- (vi) dividing the existing protected area into 2 or more separate protected areas; and

(b) either of the following apply—

- (i) the regulation dedicating or declaring the newly dedicated protected area declares that the existing

management plan applies to the newly dedicated protected area;

(ii) the Minister amends the existing management plan to apply to the newly dedicated protected area.’.

(2) Section 111(6), from ‘with’ to ‘regulation’—
omit.

39 Amendment of s 124 (Amendment of plans)

(1) Section 124, heading, ‘Amendment’—
omit, insert—
‘Approval of amendment’.

(2) Section 124(1), ‘amend’—
omit, insert—
‘approve an amendment of’.

40 Amendment of s 164 (Indictable and summary offences)

Section 164(3), after ‘88’—
insert—
‘or 89’.

41 Insertion of new s 173R

Part 11—
insert—

‘173R Provision for stock grazing in particular national parks

- ‘(1) This section applies if—
- (a) before 3 June 2006, an SEQFA forest reserve was dedicated as a conservation park; and
 - (b) a stock grazing permit under this Act (the *NCA permit*) is in force for the conservation park; and
 - (c) the conservation park is dedicated as a national park.

-
- ‘(2) On the dedication of the national park—
- (a) the NCA permit ends; and
 - (b) subject to subsection (3), the chief executive is taken to have granted the holder of the NCA permit a previous use authority under section 36.
- ‘(3) The previous use authority is taken to—
- (a) allow the use of the land, as provided for under the NCA permit, to continue until the end of the term stated in the permit; and
 - (b) require its grantee to continue to comply with all conditions of the NCA permit as if—
 - (i) the NCA permit had continued in force; and
 - (ii) the land were land in a conservation park.
- ‘(4) This section—
- (a) applies despite sections 15 and 34(2); but
 - (b) does not limit section 35.
- ‘(5) In this section—
- SEQFA forest reserve*** means a forest reserve the dedication of which was in force immediately before 18 November 2005.

42 Amendment of schedule (Dictionary)

Schedule, definition ‘*World Heritage Convention*’, from ‘set out’—

omit, insert—

‘set out in the *Wet Tropics World Heritage Protection and Management Act 1993*, schedule 2.’.

Part 6**Amendment of Wet Tropics
World Heritage Protection and
Management Act 1993****47 Act amended in pt 6**

This part amends the *Wet Tropics World Heritage Protection and Management Act 1993*.

48 Amendment of s 85 (Regulations)

(1) Section 85(2)—

insert—

‘(la) reconfiguring a lot in the wet tropics area;’.

(2) Section 85(2)(la) and (m)—

renumber as section 85(2)(m) and (n).

49 Amendment of sch 3 (Dictionary)

Schedule 3—

insert—

‘*reconfiguring a lot* see the *Integrated Planning Act 1997*, section 1.3.5(1).’.

Schedule Minor and consequential amendments of Environmental Protection Act 1994

section 6

- 1 Sections 73A(1)(a), 73O(6)(a), 97(a), 113(a), 145B(1)(a), 170(4)(a), 176(2)(a), 192(a), 193(3)(a), 206(a), 210(3)(a), 223(b), 257(2)(a), 266K(1)(a) and 278(1)(a), ‘EPP’—**
omit, insert—
‘regulatory’.
- 2 Sections 73B(2), 98(2)(a) and 114(2)(a), ‘an EPP’—**
omit, insert—
‘a regulatory’.
- 3 Sections 73B(3)(a)(iv), 98(3)(a)(iv), 114(3)(a)(iv), 145B(2)(c), 278(2)(c), 305(2)(a)(iv), 320(2)(b), 321(b), 326(2)(a), 333(2), 338(1)(a), 342(1), 343, 344(1), 345, 347(1), 348, 349, 350(2)(c), 353(2)(a), 354, 356(2)(e), 358(b), 364(1) and (2)(a), 365(1), 366(1)(c), 367(1)(a), 432(1) and (2), 433(1), 436(1)(b), 520(1)(g) and (2)(c), and 551, definition *EMP submission*, ‘an environmental management program’—**
omit, insert—
‘a transitional environmental program’.
- 4 Section 186(2), ‘subdivision 3’—**
omit, insert—
‘this part’.

Schedule (continued)

- 5 **Sections 73O(6)(b)(iv), 364(1)(a) and (5), 367(1)(c) and 458(1) and (2)(c), ‘environmental management program’—**
omit, insert—
‘transitional environmental program’.
- 6 **Chapter 7, part 3 heading, ‘Environmental management programs’—**
omit, insert—
‘Transitional environmental programs’.
- 7 **Chapter 7, part 3, division 2 heading, ‘environmental management programs’—**
omit, insert—
‘transitional environmental programs’.
- 8 **Chapter 7, part 3, division 3 heading, ‘environmental management programs’—**
omit, insert—
‘transitional environmental programs’.
- 9 **Chapter 7, part 4 heading, ‘environmental management programs’—**
omit, insert—
‘transitional environmental programs’.
- 10 **Section 330, heading, ‘an environmental management program’—**
omit, insert—
‘a transitional environmental program’.

Schedule (continued)

- 11 Sections 330 and 331, ‘An environmental management program’—**
omit, insert—
‘A transitional environmental program’.
- 12 Sections 332(1) and (2), 333(1) and (3), 334, 335(1), 336(1), 337(1), 339(1)(a), 340(1), 344(2), 352(1)(b), 353(2)(b) and (c), ‘draft environmental management program’—**
omit, insert—
‘draft transitional environmental program’.
- 13 Section 365, heading, ‘environmental management program’—**
omit, insert—
‘transitional environmental program’.
- 14 Chapter 8, part 2, division 2 heading, ‘Environmental management programs’—**
omit, insert—
‘Transitional environmental programs’.
- 15 Section 540(1)(j)—**
omit, insert—
‘(j) transitional environmental programs;’.
- 16 Section 552, heading, ‘EMP’—**
omit, insert—
‘TEP’.

Schedule (continued)

- 17 Sections 552(1)(b) and 555(1)(b), ‘an EMP’—**
omit, insert—
‘a TEP’.
- 18 Sections 556(1) and (5) and 557(1)(a), ‘EMP’—**
omit, insert—
‘TEP’.
- 19 Schedule 1, part 2, division 5, entries for sections 332(1) or (2), 337(1) or 344, 340 and 353(3)(a), ‘environmental management program’—**
omit, insert—
‘transitional environmental program’.
- 20 Schedule 1, part 2, division 5, entry for section 339(3), ‘an environmental management program’—**
omit, insert—
‘a transitional environmental program’.
- 21 Schedule 1, part 2, division 7, entries for sections 555(2) and 556(1)(a), ‘EMP’—**
omit, insert—
‘TEP’.