

Queensland



**ENVIRONMENTAL
LEGISLATION AMENDMENT
BILL 2003**

Queensland



ENVIRONMENTAL LEGISLATION AMENDMENT BILL 2003

TABLE OF PROVISIONS

Section		Page
PART 1—PRELIMINARY		
1	Short title	6
2	Commencement	6
PART 2—AMENDMENT OF NATIONAL ENVIRONMENT PROTECTION COUNCIL (QUEENSLAND) ACT 1994		
3	Act amended in pt 2.	6
4	Amendment of s 6 (Interpretation)	6
5	Amendment of s 13 (Powers of the Council)	7
6	Amendment of s 20 (Variation or revocation of measures).	7
7	Insertion of new pt 3, div 2A.	7
	<i>Division 2A—Minor variation of national environment protection measures</i>	
	22A Minor variation of measures	7
	22B Public consultation for minor variation	8
	22C Council to have regard to submissions etc.	8
8	Amendment of s 36 (Functions of the Service Corporation)	9
9	Amendment of s 43 (Leave of absence)	9
10	Amendment of s 49 (Public Service staff of Service Corporation).	9
11	Amendment of s 51 (Staff seconded to Service Corporation).	10
12	Amendment of s 56 (Application of money of Service Corporation).	10
13	Amendment of s 59 (Special provisions relating to reports etc. prepared under the Audit Act 1901 (Cwlth))	10
14	Amendment of s 64 (Review of operation of Act)	11
15	Insertion of new s 65	11

Environmental Legislation Amendment Bill 2003

65	Subsequent 5 yearly reviews	11
PART 3—AMENDMENT OF NATURE CONSERVATION ACT 1992		
16	Act amended in pt 3.	11
17	Insertion of new s 3A	11
	3A Territorial application of Act	11
18	Amendment of s 35 (Chief executive’s powers about permitted uses in national parks or national parks (recovery))	12
19	Amendment of s 36 (Authorities for new national park or national park (recovery))	12
20	Amendment of s 70 (Unlawful use of certain words)	12
21	Insertion of new pt 10, div 1 hdg.	13
	<i>Division 1—Proceedings and offences generally’.</i>	
22	Amendment of s 164 (Indictable and summary offences)	13
23	Insertion of new pt 10, divs 2 and 3	13
	<i>Division 2—Proceedings for declarations and enforcement orders</i>	
	<i>Subdivision 1—Preliminary</i>	
	173A Definitions for div 2.	13
	<i>Subdivision 2—Declarations</i>	
	173B Court may make declarations.	14
	173C Court may make orders about declarations	15
	<i>Subdivision 3—Enforcement orders</i>	
	173D Proceeding for enforcement orders	15
	173E Making interim enforcement order	15
	173F Making enforcement order.	16
	173G Effect of orders	16
	173H Court’s powers about orders	17
	173I Effect of enforcement order requiring restoration or rehabilitation of land	18
	173J Record in land registry of enforcement order requiring restoration or rehabilitation of land	19
	173K Application for removal of particulars of enforcement order from registrar’s records.	19
	173L How chief executive must deal with application	20
	173M Appeal against refusal to approve application or approval of application with conditions	21

	<i>Subdivision 4—General procedural provision</i>	
	173N Proceeding brought in representative capacity	22
	<i>Division 3—Judicial review of administrative decisions</i>	
	173O Extended standing for judicial review	22
24	Amendment of s 175 (Regulation-making power)	23
25	Amendment of schedule (Dictionary)	24
	PART 4—AMENDMENT OF RECREATION AREAS MANAGEMENT ACT 1988	
26	Act amended in pt 4.	25
27	Amendment of sch 3 (Subject matters for by-laws)	25
	PART 5—MINOR AND CONSEQUENTIAL AMENDMENTS	
28	Minor and consequential amendments of Acts	25
	SCHEDULE	26
	MINOR AND CONSEQUENTIAL AMENDMENTS	
	COASTAL PROTECTION AND MANAGEMENT ACT 1995	26
	ENVIRONMENTAL PROTECTION ACT 1994	26
	NATURE CONSERVATION ACT 1992.	29
	WET TROPICS WORLD HERITAGE PROTECTION AND MANAGEMENT ACT 1993.	30

2003

A BILL

FOR

An Act to amend particular environmental legislation

The Parliament of Queensland enacts— 1

PART 1—PRELIMINARY 2

Clause 1 Short title 3

This Act may be cited as the *Environmental Legislation Amendment Act 2003*. 4
5

Clause 2 Commencement 6

Part 2 commences on the earlier of the following days— 7

(a) a day to be fixed by proclamation; 8

(b) 19 December 2003. 9

PART 2—AMENDMENT OF NATIONAL ENVIRONMENT PROTECTION COUNCIL (QUEENSLAND) ACT 1994 10
11
12

Clause 3 Act amended in pt 2 13

This part amends the *National Environment Protection Council (Queensland) Act 1994*. 14
15

Clause 4 Amendment of s 6 (Interpretation) 16

Section 6(1)— 17

insert— 18

‘**“Ministerial Council”** means a council, comprising 1 or more Ministers 19
of the Commonwealth and Ministers of 1 or more States or Territories, 20
that includes environmental protection in its functions. 21

Environmental Legislation Amendment Bill 2003

“minor variation” , for a national environment measure, means a decision made under section 22A(1) to vary a national environment protection measure.’.	1 2 3
Clause 5 Amendment of s 13 (Powers of the Council)	4
Section 13—	5
<i>insert—</i>	6
‘(h) direct the Service Corporation to provide assistance and support to other Ministerial Councils.’.	7 8
Clause 6 Amendment of s 20 (Variation or revocation of measures)	9
Section 20—	10
<i>insert—</i>	11
‘(5) Subsections (2) to (4) do not apply to a minor variation of a national environment protection measure under division 2A.’.	12 13
Clause 7 Insertion of new pt 3, div 2A	14
After section 22—	15
<i>insert—</i>	16
<i>‘Division 2A—Minor variation of national environment protection measures</i>	17 18
‘22A Minor variation of measures	19
‘(1) The Council may vary a national environment protection measure if—	20 21
(a) the variation is supported by a unanimous resolution of all the members; and	22 23
(b) the resolution states that the variation does not involve a significant change in the effect of the national environment protection measure.	24 25 26
‘(2) A variation under this section is a minor variation.	27

- ‘(3) If the Council decides that a variation does not involve a significant change in the effect of the national environment protection measure, the Council must prepare—
- (a) a draft of the proposed variation; and
 - (b) a statement about the variation explaining each of the following—
 - (i) the reasons for the proposed variation;
 - (ii) the nature and effect of the proposed variation;
 - (iii) the reasons why the Council is satisfied the proposed variation is a minor variation.

‘22B Public consultation for minor variation

- ‘(1) Before making a minor variation to a national environment protection measure, the Council must publish a notice—
- (a) stating how the draft of the proposed variation and the explanatory statement may be obtained; and
 - (b) inviting submissions to the Council on the proposed variation, or on the explanatory statement, within a stated period.
- ‘(2) The notice must—
- (a) be published in the Commonwealth of Australia Gazette; and
 - (b) in each participating State or Territory concerned—also be published, on at least 1 day during the month when the gazette notice is published, in a newspaper circulating in the State or Territory.
- ‘(3) The period stated in the notice must end at least 1 month after the day on which subsection (2)(b) has been fully complied with in all participating jurisdictions.

‘22C Council to have regard to submissions etc.

- ‘In making a minor variation to a national environment protection measure, the Council must have regard to each of the following—
- (a) all submissions it receives that relate to the proposed variation or the explanatory statement;

	(b) whether the measure is consistent with section 3 of the Agreement;	1 2
	(c) relevant international agreements to which Australia is a party;	3
	(d) any regional environmental differences in Australia.’.	4
Clause 8	Amendment of s 36 (Functions of the Service Corporation)	5
	(1) Section 36—	6
	<i>insert—</i>	7
	‘(aa) to provide assistance and support to other Ministerial Councils as directed by the Council; and’.	8 9
	(2) Section 36(b), after ‘(a)’—	10
	<i>insert—</i>	11
	‘or (b)’.	12
	(3) Section 36(aa) and (b)—	13
	<i>renumber</i> as section 36(b) and (c).	14
Clause 9	Amendment of s 43 (Leave of absence)	15
	Section 43(1), from ‘Subject’ to ‘87E, the’—	16
	<i>omit, insert—</i>	17
	‘The’.	18
Clause 10	Amendment of s 49 (Public Service staff of Service Corporation)	19
	(1) Section 49(1), from ‘appointed’ to ‘(Cwlth)’—	20
	<i>omit, insert—</i>	21
	‘engaged under the <i>Public Service Act 1999</i> (Cwlth)’.	22
	(2) Section 49(2)—	23
	<i>omit, insert—</i>	24
	‘(2) For the <i>Public Service Act 1999</i> (Cwlth)—	25

Environmental Legislation Amendment Bill 2003

- (a) the NEPC Executive Officer and the APS employees assisting the NEPC Executive Officer together constitute a Statutory Agency; and
- (b) the NEPC Executive Officer is the Head of the Statutory Agency.’.

Clause 11	Amendment of s 51 (Staff seconded to Service Corporation)	6
	Section 51(1), from ‘officers’ to ‘Service,’—	7
	<i>omit, insert—</i>	8
	‘persons engaged under the <i>Public Service Act 1999</i> (Cwlth),’.	9
Clause 12	Amendment of s 56 (Application of money of Service Corporation)	10
	Section 56—	11
	<i>insert—</i>	12
	‘(2) Subsection (1) does not prevent investment of surplus money of the Service Corporation under the <i>Commonwealth Authorities and Companies Act 1997</i> (Cwlth), section 18, as it applies to the Service Corporation under section 59 of the Commonwealth Act.’.	13
		14
		15
		16
		17
Clause 13	Amendment of s 59 (Special provisions relating to reports etc. prepared under the <i>Audit Act 1901</i> (Cwlth))	18
	(1) Section 59, heading, ‘ <i>Audit Act 1901</i> (Cwlth)’—	19
	<i>omit, insert—</i>	20
	‘ Commonwealth Authorities and Companies Act 1997 (Cwlth)’.	21
	(2) Section 59(1), ‘ <i>Audit Act 1901</i> (Cwlth), section 63M,’—	22
	<i>omit, insert—</i>	23
	‘ <i>Commonwealth Authorities and Companies Act 1997</i> (Cwlth), section 9,’.	24
		25
		26
	(3) Section 59(2), from ‘Commonwealth’ to ‘63M,’—	27
	<i>omit, insert—</i>	28

‘responsible Minister under the *Commonwealth Authorities and Companies Act 1997* (Cwlth), section 9.’ 1
2

Clause 14 Amendment of s 64 (Review of operation of Act) 3

Section 64, heading— 4

omit, insert— 5

‘64 Initial review after fifth anniversary of commencement of Act’. 6

Clause 15 Insertion of new s 65 7

After section 64— 8

insert— 9

‘65 Subsequent 5 yearly reviews 10

‘(1) As soon as possible after the end of every 5 year period following 11
the review under section 64, the Council must cause a further review of the 12
matters mentioned in section 64(1) to be undertaken. 13

‘(2) The Minister must table a report of each further review in the 14
Legislative Assembly within 1 year after the end of the period to which it 15
relates.’. 16

**PART 3—AMENDMENT OF NATURE CONSERVATION 17
ACT 1992 18**

Clause 16 Act amended in pt 3 19

This part amends the *Nature Conservation Act 1992*. 20

Clause 17 Insertion of new s 3A 21

Part 1— 22

insert— 23

‘3A Territorial application of Act 24

‘(1) This Act applies both within and outside Queensland. 25

	‘(2) This Act applies outside Queensland to the full extent of the extraterritorial legislative power of the Parliament.’.	1 2
Clause 18	Amendment of s 35 (Chief executive’s powers about permitted uses in national parks or national parks (recovery))	3 4
	(1) Section 35(1)(a)—	5
	<i>omit, insert—</i>	6
	‘(a) the use under the authority is only for a service facility; and’.	7
	(2) Section 35(1)—	8
	<i>insert—</i>	9
	‘(c) the use under the authority is prescribed under a regulation made for this section to be a permitted use for the area.’.	10 11
Clause 19	Amendment of s 36 (Authorities for new national park or national park (recovery))	12 13
	Section 36(6), definition “service facility”—	14
	<i>omit.</i>	15
Clause 20	Amendment of s 70 (Unlawful use of certain words)	16
	(1) Section 70(1)—	17
	<i>insert—</i>	18
	‘Maximum penalty—50 penalty units.’.	19
	(2) Section 70—	20
	<i>insert—</i>	21
	‘(3) However, subsections (1) and (2) do not stop a person using the words ‘national park’ or ‘conservation park’ in referring to the name of—	22 23
	(a) a zone of a marine park set apart and declared under the <i>Marine Parks Act 1982</i> ; or	24 25
	(b) an area declared to be part of the Great Barrier Reef Marine Park under the <i>Great Barrier Reef Marine Park Act 1975 (Cwlth)</i> .’.	26 27

Environmental Legislation Amendment Bill 2003

Clause 21	Insertion of new pt 10, div 1 hdg	1
	Part 10, before section 160—	2
	<i>insert—</i>	3
	<i>‘Division 1—Proceedings and offences generally’.</i>	4
Clause 22	Amendment of s 164 (Indictable and summary offences)	5
	Section 164(1), after ‘indictable offence’—	6
	<i>insert—</i>	7
	‘, and is a misdemeanour’.	8
Clause 23	Insertion of new pt 10, divs 2 and 3	9
	Part 10, after section 173—	10
	<i>insert—</i>	11
	<i>‘Division 2—Proceedings for declarations and enforcement orders</i>	12
	<i>‘Subdivision 1—Preliminary</i>	13
	‘173A Definitions for div 2	14
	‘In this division—	15
	“court” means the Planning and Environment Court.	16
	“nominated offence” means an offence against section 62, 88, 89, 90, 91, 92, 94, 97 or 109. ¹	17 18
	“person” includes a body of persons, whether incorporated or unincorporated.	19 20

1 Section 62 (Restriction on taking etc. of cultural and natural resources of protected areas), 88 (Restriction on taking etc. protected animals), 89 (Restriction on taking etc. protected plants), 90 (Restriction on using threatened or rare plants), 91 (Prohibition on release etc. of international and prohibited wildlife), 92 (Prohibition on breeding etc. hybrids of protected animals), 94 (Conservation officers prohibited in dealing with protected wildlife), 97 (Restriction on taking etc. of native wildlife in areas of major interest and critical habitats) or 109 (Compliance with order)

<i>‘Subdivision 2—Declarations</i>	1
‘173B Court may make declarations	2
‘(1) A person may bring a proceeding in the court for a declaration about a following matter, other than an excluded matter—	3 4
(a) a matter that has been, is to be or should have been done for this Act;	5 6
(b) the construction of—	7
(i) this Act, including, for example, a conservation plan or a management plan; or	8 9
(ii) an authority granted, made, issued or given under the Act over, or in relation to, land in a protected area; or	10 11
(iii) a licence, permit or other authority issued or given under a regulation;	12 13
(c) the lawfulness under this Act of an activity.	14
‘(2) The court has jurisdiction to hear and decide a proceeding for a declaration under this section.	15 16
‘(3) A person who starts a proceeding under this section must, within 7 days after the person starts the proceeding, give the chief executive written notice of the proceeding.	17 18 19
Maximum penalty—20 penalty units.	20
‘(4) The Minister or the chief executive may choose to be a party to the proceeding by filing in the court a notice of election in the form approved by the chief executive.	21 22 23
‘(5) In this section—	24
“excluded matter” means a matter relating to—	25
(a) a licence, permit or other authority issued or given under a regulation authorising—	26 27
(i) the recreational keeping of wildlife; or	28
(ii) the care and rehabilitation of sick, injured or orphaned protected animals or animals whose habitats have been destroyed by human activity or natural disaster; or	29 30 31
(b) camping in protected areas.	32

‘173C Court may make orders about declarations

‘The court may also make an order about a declaration made under section 173B.

‘Subdivision 3—Enforcement orders**‘173D Proceeding for enforcement orders**

‘(1) A person may bring a proceeding in the court—

(a) for an order to remedy or restrain the commission of a nominated offence (an **“enforcement order”**); or

(b) if the person has brought a proceeding under this section for an enforcement order and the court has not decided the proceeding—for an order under section 173E (an **“interim enforcement order”**); or

(c) for an order to cancel or change an enforcement order or interim enforcement order.

‘(2) The person may bring a proceeding for an enforcement order whether or not any right of the person has been, or may be, infringed by, or because of, the commission of the offence.

‘(3) If the chief executive is not a party to a proceeding for an enforcement order, the person must, within 7 days after the person starts the proceeding, give the chief executive written notice of the proceeding.

Maximum penalty—20 penalty units.

‘(4) The Minister or the chief executive may choose to be a party to the proceeding by filing in the court a notice of election in the form approved by the chief executive.

‘173E Making interim enforcement order

‘(1) The court may make an order pending a decision of a proceeding for an enforcement order if the court is satisfied it would be appropriate to make the order.

‘(2) The court may make the order subject to conditions.

‘(3) However, the court may not require as a condition of the order that the applicant for the order give an undertaking about damages.

‘173F Making enforcement order	1
‘(1) The court may make an enforcement order if the court is satisfied the nominated offence—	2 3
(a) is being or has been committed; or	4
(b) will be committed unless the enforcement order is made.	5
‘(2) If the court is satisfied the offence is being or has been committed, the court may make an enforcement order whether or not there has been a prosecution for the offence under this Act.	6 7 8
‘173G Effect of orders	9
‘(1) An enforcement order or an interim enforcement order may direct a party to the proceeding for the order—	10 11
(a) to stop an activity that constitutes, or will constitute, a nominated offence; or	12 13
(b) not to start an activity that will constitute a nominated offence; or	14
(c) to do anything required to stop committing a nominated offence; or	15 16
(d) to return anything to a condition as close as practicable to the condition it was in immediately before a nominated offence was committed; or	17 18 19
(e) to do anything to comply with this Act.	20
‘(2) Without limiting the court’s powers, an enforcement order or an interim enforcement order may require—	21 22
(a) the repair, demolition or removal of a building; or	23
(b) for a relevant nominated offence—	24
(i) the rehabilitation or restoration of a protected area, the habitat of protected wildlife, a critical habitat or an area of major interest (an “ affected area ”); or	25 26 27
(ii) if an affected area is not capable of being rehabilitated or restored—the planting and nurturing of cultural or natural resources, wildlife or the habitat of protected wildlife in a stated area of equivalent size to the affected area.	28 29 30 31
‘(3) An enforcement order or an interim enforcement order—	32

Environmental Legislation Amendment Bill 2003

- (a) may be in terms the court considers appropriate to secure compliance with this Act; and 1
2
- (b) must state the time by which the order is to be complied with. 3
- ‘(4) A person must not contravene an enforcement order or an interim enforcement order. 4
5
- Maximum penalty—3 000 penalty units or 2 years imprisonment. 6
- ‘(5) In this section— 7
- “**relevant nominated offence**” means a nominated offence relating to any of the following— 8
9
- (a) taking or interfering with natural or cultural resources of a protected area;² 10
11
- (b) taking protected wildlife, other than in a protected area;³ 12
- (c) taking or interfering with native wildlife, other than protected wildlife, in a critical habitat or area of major interest.⁴ 13
14
- ‘173H Court’s powers about orders** 15
- ‘(1) The court’s power to make an enforcement order or interim enforcement order to stop, or not to start, an activity may be exercised— 16
17
- (a) whether or not it appears to the court that the person against whom the order is made intends to engage, or to continue to engage, in the activity; and 18
19
20
- (b) whether or not the person against whom the order is made has previously engaged in an activity of the kind; and 21
22
- (c) whether or not there is danger of substantial damage to nature or injury to another person if the person against whom the order is made engages, or continues to engage, in the activity. 23
24
25
- ‘(2) The court’s power to make an enforcement order or interim enforcement order to do anything may be exercised— 26
27

2 See section 62 (Restriction on taking etc. of cultural and natural resources of protected areas).

3 See sections 88 (Restriction on taking etc. protected animals) and 89 (Restriction on taking etc. protected plants).

4 See section 97 (Restriction on taking etc. of native wildlife in areas of major interest and critical habitats).

Environmental Legislation Amendment Bill 2003

(a)	whether or not it appears to the court that the person against whom the order is made intends to fail, or to continue to fail, to do the thing; and	1 2 3
(b)	whether or not the person against whom the order is made has previously failed to do a thing of the kind; and	4 5
(c)	whether or not there is danger of substantial damage to nature or injury to another person if the person against whom the order is made fails, or continues to fail, to do the thing.	6 7 8
‘(3)	The court may make an order to cancel or change an enforcement order or interim enforcement order.	9 10
‘(4)	The court’s power under this section is in addition to its other powers.	11 12
‘173I	Effect of enforcement order requiring restoration or rehabilitation of land	13 14
‘(1)	This section applies if—	15
(a)	the court makes an enforcement order directing a person (the “ declared person ”) to restore or rehabilitate land; and	16 17
(b)	the declared person has an interest in the land; and	18
(c)	the order states that this section applies to the land.	19
‘(2)	The person who started the proceeding for the enforcement order must, as soon as practicable after the enforcement order is made, give the chief executive—	20 21 22
(a)	written notice stating that the order has been made; and	23
(b)	a copy of the order.	24
Maximum penalty—	20 penalty units.	25
‘(3)	Subsection (4) applies if the declared person transfers to another person (the “ transferee ”), in any way, all or part of the declared person’s interest in the land.	26 27 28
‘(4)	To the extent the land is the subject of the enforcement order, on the transfer—	29 30
(a)	a reference in the enforcement order to the declared person is taken to be a reference to the transferee; and	31 32

Environmental Legislation Amendment Bill 2003

(b) the enforcement order is taken to have been made against the transferee on the transfer of the interest; and	1 2
(c) any outstanding liability, other than criminal liability, of the declared person becomes a liability of the transferee.	3 4
‘(5) If it is not reasonably practical for the transferee to comply with the enforcement order within the time stated in the order, the transferee may apply to the court, under section 173D(1)(c), for an order to change the enforcement order by extending the time for compliance with the enforcement order.	5 6 7 8 9
‘(6) To remove any doubt, it is declared that on the transfer of the interest, the declared person is not criminally liable for any contravention of the enforcement order that happens on or after the transfer of the interest.	10 11 12 13
‘(7) Subsections (4) to (6) have effect in relation to each successor in title to the transferee’s interest in the same way the subsections had effect in relation to the transferee.	14 15 16
‘173J Record in land registry of enforcement order requiring restoration or rehabilitation of land	17 18
‘(1) As soon as practicable after receiving a notice under section 173I(2) that the enforcement order has been made, the chief executive must give the registrar written notice of the making of the order.	19 20 21
‘(2) The registrar must keep records showing the enforcement order has been made.	22 23
‘(3) The registrar must keep the records in a way that a search of the register kept by the registrar under any Act relating to title to the land the subject of the enforcement order will show the enforcement order has been made.	24 25 26 27
‘173K Application for removal of particulars of enforcement order from registrar’s records	28 29
‘(1) This section applies to a person who—	30
(a) has an interest in land that is the subject of an enforcement order to which section 173I applies; and	31 32
(b) wishes to have the particulars of the enforcement order removed from the registrar’s records because—	33 34

Environmental Legislation Amendment Bill 2003

- (i) the enforcement order has been cancelled by the court; or 1
 - (ii) the enforcement order has been substantially complied with; 2
or 3
 - (iii) the person proposes alternative measures for ensuring the 4
land is restored or rehabilitated. 5
- Example of alternative measures—* 6
- a covenant registered under the *Land Title Act 1994* 7
- ‘(2) The person may apply to the chief executive for the particulars of the 8
enforcement order to be removed from the registrar’s records. 9
- ‘(3) The application must be— 10
- (a) in writing; and 11
 - (b) accompanied by, according to the circumstances— 12
 - (i) a copy of the order made by the court cancelling the 13
enforcement order; or 14
 - (ii) the information or documents the person relies on to 15
establish the enforcement order has been substantially 16
complied with; or 17
 - (iii) details of the alternative measures proposed by the person to 18
ensure the land will be restored or rehabilitated. 19
- ‘173L How chief executive must deal with application 20**
- ‘(1) If the chief executive receives an application under section 173K, 21
the chief executive must, within 6 weeks after receiving the application— 22
- (a) decide whether the chief executive is reasonably satisfied, 23
according to the circumstances— 24
 - (i) the enforcement order has been cancelled by the court; or 25
 - (ii) the enforcement order has been substantially complied with; 26
or 27
 - (iii) the alternative measures proposed by the applicant will 28
ensure the land will be restored or rehabilitated; and 29
 - (b) either— 30

Environmental Legislation Amendment Bill 2003

(i)	approve the application, with or without conditions to be complied with before particulars of the enforcement order may be removed from the registrar's records; or	1 2 3
(ii)	refuse to approve the application.	4
‘(2)	As soon as practicable after acting under subsection (1), the chief executive must—	5 6
(a)	give the applicant written notice stating—	7
(i)	the decision and the reasons for it; and	8
(ii)	if the chief executive refuses to approve the application or approves the application with conditions—	9 10
(A)	that the applicant may appeal against the decision to the court within 28 days after the person receives the notice; and	11 12 13
(B)	how to appeal; and	14
(b)	if the chief executive approves the application without conditions—give written notice of the fact to the registrar.	15 16
‘(3)	If the chief executive approves the application with conditions and the chief executive is reasonably satisfied the conditions have been complied with, the chief executive must, as soon as practicable, give written notice of the fact to the registrar.	17 18 19 20
‘(4)	As soon as practicable after receiving a notice under subsection (2)(b) or (3), the registrar must remove the particulars of the enforcement order from the registrar's records.	21 22 23
‘(5)	As soon as the particulars of the enforcement order have been removed from the registrar's records, the enforcement order is taken to have been complied with.	24 25 26
‘173M	Appeal against refusal to approve application or approval of application with conditions	27 28
‘(1)	This section applies if—	29
(a)	a person who has an interest in land that is the subject of an enforcement order applies, as required under section 173K, for the enforcement order to be removed from the registrar's records; and	30 31 32 33

(b) the chief executive refuses to approve the application or approves the application with conditions.	1 2
‘(2) The applicant may appeal against the chief executive’s decision to the court within 28 days after the applicant receives notice of the decision under section 173L.	3 4 5
‘(3) If the applicant appeals against the decision, the court may make any order it considers appropriate, including, for example, an order directing the registrar to remove the particulars of the enforcement order from the registrar’s records.	6 7 8 9
‘ <i>Subdivision 4—General procedural provision</i>	10
‘ 173N Proceeding brought in representative capacity	11
‘(1) A proceeding under this division may be brought by a person on behalf of an entity with the entity’s consent.	12 13
‘(2) The person who brings the proceeding is a party to the proceeding, despite the proceeding being brought on behalf of another entity.	14 15
‘(3) The entity on whose behalf the proceeding is brought is not a party to the proceeding.	16 17
‘(4) If the entity on whose behalf the proceeding is brought is an unincorporated body, the body’s committee or other controlling or governing body must give the consent.	18 19 20
‘(5) The entity on whose behalf the proceeding is brought may contribute to, or pay, the legal costs incurred by the person bringing the proceeding.	21 22 23
‘ <i>Division 3—Judicial review of administrative decisions</i>	24
‘ 173O Extended standing for judicial review	25
‘(1) This section applies, for the <i>Judicial Review Act 1991</i> , to any of the following—	26 27
(a) a decision made under this Act;	28
(b) a failure to make a decision under this Act;	29

Environmental Legislation Amendment Bill 2003

(c) conduct engaged in for the purpose of making a decision under this Act. 1
2

‘(2) An individual is taken to be a person aggrieved by a decision, failure or conduct mentioned in subsection (1) if— 3
4

(a) the individual is— 5

(i) an Australian citizen; or 6

(ii) ordinarily resident in Australia; and 7

(b) at any time in the 2 years immediately before the decision, failure or conduct, the individual engaged in a series of activities in Australia for the protection or conservation of, or research into, the environment. 8
9
10
11

‘(3) A corporation or association, whether or not incorporated, and a person acting for an unincorporated association, is taken to be a person aggrieved by a decision, failure or conduct mentioned in subsection (1) if— 12
13
14

(a) the corporation or association is incorporated, or was otherwise established, in Australia; and 15
16

(b) at any time in the 2 years immediately before the decision, failure or conduct, the corporation or association engaged in a series of activities in Australia for the protection or conservation of, or research into, the environment; and 17
18
19
20

(c) at the time of the decision, failure or conduct, the objects or purposes of the corporation or association include protection or conservation of, or research into, the environment. 21
22
23

‘(4) A term used in this section that is defined in the *Judicial Review Act 1991*⁵ has the meaning given to it by that Act.’. 24
25

Clause 24 Amendment of s 175 (Regulation-making power) 26

(1) Section 175(2)(c) to (p)— 27

renumber as section 175(2)(d) to (q). 28

(2) Section 175(2)— 29

insert— 30

5 See, for example, the *Judicial Review Act 1991*, sections 5 (Meaning of “making of a decision” and “failure to make a decision”) and 8 (Conduct engaged in for making decision—preparatory acts).

Environmental Legislation Amendment Bill 2003

- (c) providing for the safety of persons in protected areas, including the regulation of access to, and activities in, protected areas by persons or classes of persons; 1
2
3

Example for paragraph (c)— 4

A regulation might regulate camping in a protected area by children, or adults accompanying children, to protect children from injury by animals.’. 5
6

Clause 25	Amendment of schedule (Dictionary)	7
	(1) Schedule, definition “registrar”—	8
	<i>omit.</i>	9
	(2) Schedule—	10
	<i>insert—</i>	11
	‘ “court” , for part 10, division 2, see section 173A.	12
	“enforcement order” see section 173D(1)(a).	13
	“interim enforcement order” see section 173D(1)(b).	14
	“nominated offence” , for part 10, division 2, see section 173A.	15
	“person” , for part 10, division 2, see section 173A.	16
	“registrar” means the registrar of titles under the <i>Land Title Act 1994</i> .	17
	“service facility” means any of the following—	18
	(a) a communications facility, including for example, a communications tower or cable;	19 20
	(b) a device designed to be used for navigation or the guidance of aircraft or vessels;	21 22
	(c) a transmission grid or supply network under the <i>Electricity Act 1994</i> ;	23 24
	(d) a pipeline for oil or gas;	25
	(e) a water supply or sewerage facility, including, for example, a pipeline or pumping station.’.	26 27
	(3) Schedule, definition “CITES”, from ‘1973,’—	28

omit, insert— 1
 ‘1973.⁶’. 2

PART 4—AMENDMENT OF RECREATION AREAS 3
MANAGEMENT ACT 1988 4

Clause 26 Act amended in pt 4 5
 This part amends the *Recreation Areas Management Act 1988*. 6

Clause 27 Amendment of sch 3 (Subject matters for by-laws) 7
 (1) Schedule 3, item 27— 8
renumber as schedule 3, item 28. 9
 (2) Schedule 3— 10
insert— 11
 ‘27. Without limiting any other item of this schedule, providing for the 12
 safety of persons in recreation areas, including the regulation of 13
 access to, and activities in, recreation areas by persons or classes of 14
 persons. 15
Example— 16
 A by-law might regulate camping in a recreation area by children, or adults 17
 accompanying children, to protect children from injury by animals.’. 18

PART 5—MINOR AND CONSEQUENTIAL 19
AMENDMENTS 20

Clause 28 Minor and consequential amendments of Acts 21
 The schedule amends the Acts it mentions. 22

6 The English text of the convention is set out in Australian Treaty Series 1976 No. 29.

SCHEDULE	1
MINOR AND CONSEQUENTIAL AMENDMENTS	2
section 28	3
COASTAL PROTECTION AND MANAGEMENT ACT 1995	4 5
1 Section 80(1), after ‘indictable offence’—	6
<i>insert—</i>	7
‘, and is a misdemeanour’.	8
ENVIRONMENTAL PROTECTION ACT 1994	9
1 Section 23(2), ‘Fire and Rescue Authority Act 1990’—	10
<i>omit, insert—</i>	11
‘Fire and Rescue Service Act 1990’.	12
2 Section 140(3), ‘90(1)’—	13
<i>omit, insert—</i>	14
‘90’.	15
3 Section 303(3), ‘on the later’—	16
<i>omit, insert—</i>	17
‘when the later’.	18

SCHEDULE (continued)

4	Section 303(3)(d)—	1
	<i>omit.</i>	2
5	Section 494—	3
	<i>insert—</i>	4
	‘(1A) An indictable offence against this Act is—	5
	(a) for an offence for which the maximum penalty of imprisonment	6
	is 5 or more years—a crime; or	7
	(b) otherwise—a misdemeanour.’	8
6	Section 585(4), definition “planning document”, paragraph (b),	9
	‘133(g)(i)’—	10
	<i>omit, insert—</i>	11
	‘133(1)(g)(i)’.	12
7	Section 585(4), definition “planning document”, paragraph (c),	13
	‘183(m)’—	14
	<i>omit, insert—</i>	15
	‘183(1)(m)’.	16
8	Schedule 1, part 2, before division 1—	17
	<i>insert—</i>	18
	‘Division 1A—Decisions under chapter 1’.	19
9	Schedule 1, part 2, division 1, entries for section 13(4)—	20
	<i>relocate</i> to division 1A, as inserted.	21

SCHEDULE (continued)

10	Schedule 1, part 2, division 1, ‘89H(3)(b)(i)’—	1
	<i>omit, insert—</i>	2
	‘89H(3)(b)’.	3
11	Schedule 1, part 2, division 1, entry for section 101, ‘(with development approval)’—	4
	<i>omit.</i>	5
		6
12	Schedule 1, part 2, division 4, entry for section 341(1)—	7
	<i>omit.</i>	8
13	Schedule 1, part 2, division 4, before entry for section 451(1)—	9
	<i>insert—</i>	10
	‘Division 4A—Decision under chapter 9’.	11
14	Schedule 3, definition “development condition”, ‘State Development and Public Works Organisation Act 1971, section 29O(5)’—	12
	<i>omit, insert—</i>	13
		14
	‘State Development Act, section 39(1)’.	15
		16
15	Schedule 3, definition “environmental protection order”, ‘467’—	17
	<i>omit, insert—</i>	18
	‘358’.	19

SCHEDULE (continued)

NATURE CONSERVATION ACT 1992

	1
1 Section 89(1) and (4)—	2
<i>insert—</i>	3
‘Maximum penalty—3 000 penalty units or 2 years imprisonment.’	4
2 Section 89, penalty at end of section—	5
<i>omit.</i>	6
3 Section 129(3), ‘in of’—	7
<i>omit, insert—</i>	8
‘in’.	9
4 Section 135(1)(a), ‘;’—	10
<i>omit, insert—</i>	11
‘; or’.	12
5 Section 175(2)(k), as renumbered by this Act—	13
<i>omit, insert—</i>	14
‘(k) the taking, keeping or use of wildlife, the moving of wildlife into,	15
in and out of the State, the release of wildlife into the wild and	16
other dealing with wildlife;’	17

SCHEDULE (continued)

WET TROPICS WORLD HERITAGE PROTECTION AND MANAGEMENT ACT 1993	1 2
1 Section 82—	3
<i>insert—</i>	4
‘(1A) An offence against section 56 is a misdemeanour.’	5