Nature Conservation and Other Legislation Amendment Bill 2025

Explanatory Notes

Short title

The short title of the Bill is the Nature Conservation and Other Legislation Amendment Bill 2025.

Policy objectives and the reasons for them

The overarching objective of the Nature Conservation and Other Legislation Amendment Bill 2025 (the Bill) is to clearly establish that electronic systems may be used for automatically issuing particular authorities. The objectives of the Bill are to:

1. ensure authorities for low-risk activities under the *Nature Conservation Act 1992* (NC Act) and the *Environmental Protection Act 1994* (EP Act) can continue to be issued automatically through the use of an electronic system; and
2. ensure there is no doubt regarding the validity of authorities under the NC Act and EP Act that were previously issued automatically by electronic systems.

The Bill seeks to embed best practice principles, and amend the relevant legislative frameworks to contemporise and more transparently set out the use of electronic systems for automatically issuing particular low-risk authorities, while ensuring these authorities are still valid and subject to relevant regulatory requirements. This will put beyond any doubt that previously automatically issued authorities are valid, in keeping with public interest to maintain rights and entitlements. It will also ensure that, for low-risk activities, electronic systems can continue to be used for automatically issuing authorities whilst complying with principles of fairness, rationality and transparency.

The Bill will make certain that a person has the same rights and interests in relation to challenging the decision under either the EP Act or NC Act and any other law, as they would if the decision was issued by the chief executive under the respective Act.

The Bill also seeks to make other minor clarifying amendments, including amendments to ensure compliance and enforcement tools issued prior to the passage of the *Environmental Protection (Powers and Penalties) and Other Legislation Amendment Act 2024* (P&P Act), are enforceable via the issuance of a Penalty Infringement Notice (PIN).

Achievement of policy objectives

Automated approvals

The Bill will achieve its objective of ensuring authorities for low-risk activities can continue to be issued automatically through the use of electronic systems, by establishing contemporary enabling provisions for the approval and use of electronic systems for the automatic issuing of particular authorities, in a way that satisfies administrative law principles and regulatory obligations.

The Bill also ensures that authorities previously issued automatically by electronic systems are valid by retrospectively establishing the validity of these authorities under the NC Act and EP Act.

Penalty Infringement Notices (PINs) under the EP Act

The Bill will achieve its objective relating to PINs under the EP Act by providing operational certainty and administrative clarity, ensuring the regulator has access to the full suite of compliance and enforcement tools available under the EP Act as originally intended.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives other than by legislative amendment. Administrative changes are not sufficient to achieve the policy objectives.

Estimated cost for government implementation

Automated approvals

The amendments solidify existing departmental practices and costs of implementation will be covered by existing departmental budgets.

Penalty Infringement Notices (PINs) under the EP Act

There will be no additional costs for implementation of the PINs amendments. Overall, the amendments will provide greater operational certainty and administrative clarity for the community and the regulator.

Consistency with fundamental legislative principles

Overall, the Bill is consistent with fundamental legislative principles (FLPs). However, potential breaches of FLPs are addressed below.

Legislation should not adversely affect rights and liberties, or impose obligations, retrospectively - *Legislative Standards Act 1992*, section 4(3)(g)

Section 4(3)(g) of the *Legislative Standards Act 1992* provides that legislation should not adversely affect rights and liberties, or impose obligations, retrospectively. While the Bill includes amendments which may have retrospective application, these do not adversely impact the rights and liberties of individuals.

Validating automatically granted authorities

The Bill inserts a validation provision into the NC Act to ensure that authorities automatically issued since 2017 and up to commencement are valid. The validation provides certainty to individuals and the community who have relied upon these authorities to lawfully conduct activities in relation to native animals, and applies irrespective of whether the authorities can continue to be automatically dealt with or not.

Given the time period, and to provide the greatest amount of certainty for individuals and the community, the validation is sufficiently broad to deal with authorities automatically issued since 2017. This includes any rewrites of the regulations or system variations since that time, including changes in the types of authorities that could have been automatically granted. The validation gives individuals certainty about their rights, and the community certainty about who they have been or are dealing with.

Section 173O of the NC Act provides extended review rights under the *Judicial Review Act 1991* for individuals in particular circumstances. Although these review rights have been clarified and have not been removed, the validation arguably impacts on these review rights by limiting the range of matters available for review. However, this is counterbalanced by the strong justification for validating the individual rights of the authority holders to ensure they have the certainty they need and have relied on to undertake the activities authorised under the authority. Further, existing mechanisms under the NC Act allow the chief executive to amend or cancel an authority, thus providing a further safeguard to checking that an authority continues to comply with the requirements of the Act.

To be clear, the validation only applies to automated decisions to the extent the chief executive could have lawfully made the same decision – that is, the validation does not apply to a decision that could not have been lawfully made by the chief executive. Further, the validation does not apply to a decision made by a person – that is, the chief executive or a delegate failing to act lawfully.

Going forward, protection mechanisms have been built into the Bill to make sure the process and criteria for automated dealings for particular authorities are much clearer. This includes a contemporary and clear head of power to automatically deal with particular authorities using an approved electronic system, and clarity around the processes involved in automatic dealings with particular authorities.

Overall, the validations (for provisions relating to previously granted authorities under the NC Act and EP Act) are justifiable on the basis that it does not adversely affect individuals' rights and liberties and is being used to provide clarification to prevent unintended consequences. The validation does not impose obligations retrospectively. Rather, the amendment confirms that authorities that have been relied upon by authority holders as validly issued are, in fact, legally valid. The amendments give sufficient regard to the FLPs.

Penalty Infringement Notices (PINs) under the EP Act

The Bill amends existing section 811 of the EP Act to clarify that the offence provisions in former Chapter 7, Parts 5 to 5B relating to environmental protection orders (EPOs), clean-up notices and direction notices continue to apply as if the EP Act had not been amended by the P&P Act. The introduction of the Environmental Enforcement Order (EEO) was never intended to absolve recipients of their obligations or nullify any actions (e.g. issuing of a PIN) or proceedings by the administering authority in response to the non-compliance with a notice or order issued under the pre-amendment EP Act. The amendments potentially engage the FLP that legislation should not adversely affect rights and liberties, or impose obligations, retrospectively.

The amendments are not considered retrospective as the intent was always to ensure the administering authority was able to respond to non-compliance in an equitable and consistent way, thereby ensuring that the community and the environment are protected. Ambiguity exists regarding whether the administering authority may issue any infringement notice for failure to comply with an existing EPO, direction notice, or clean-up notice as an alternative to court proceedings being brought. The Bill seeks to address this ambiguity by clarifying the application of chapter 13, part 32 in this respect. The Bill ensures that the policy intent of the P&P Act is achieved.

A Bill should have sufficient regard to the institution of Parliament – *Legislative Standards Act 1992*, section 4(4)

Section 4(4) of the *Legislative Standards Act 1992* provides that a Bill should have sufficient regard to the institution of Parliament, including that the Bill: (a) allows the delegation of legislative power only in appropriate cases and to appropriate persons; and (b) sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly. While the Bill includes amendments to the NC Act which sub-delegate power regarding the process for automatic dealing with particular authorities, it does so with sufficient regard to the institution of Parliament.

The Bill provides for these automated matters to be prescribed by regulation, including the types of authorities that may be automatically dealt with as well as the way in which these authorities may be automatically dealt with. While technically a sub-delegation of power, the Bill also requires that the Minister be satisfied that a regulation prescribing the type of authority that may be automatically dealt with and the way it is to be dealt with would not have a detrimental effect on achieving the object of the Act. In addition, the Bill establishes a safeguard by providing that an electronic system must not be used to automatically deal with an authority prescribed by regulation unless the chief executive has approved the use of the system for that purpose. As the regulation must be tabled in Parliament and subject to disallowance, sufficient regard is had to the institution of Parliament.

Consultation

Stakeholders were not specifically consulted about the amendments in the Bill. The legislative amendments seek to solidify existing departmental practices, and are considered clarifying in nature. Further, they do not have any adverse impact on business or community.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland and is not uniform with or complementary to legislation of the Commonwealth or another state.

Notes on provisions

Part 1 Preliminary

Clause 1 Short title

Clause 1 states that the Act may be cited as the *Nature Conservation and Other Legislation Amendment Act 2025*.

Clause 2 Commencement

Clause 2 states that the provisions relating to automatic grant of low-risk authorities (part 2, division 3; part 3 and schedule 1) will commence 28 days after assent of the Bill.

The remaining amendments in the Bill that relate to penalty infringement notices (PINs) under the *Environmental Protection Act 1994* will commence on assent.

Part 2 Amendment of Environmental Protection Act 1994

Division 1 Preliminary

Clause 3 Act amended

Clause 3 specifies that this part (part 2 of the Bill) amends the *Environmental Protection Act 1994*. Note that schedule 1 also amends the *Environmental Protection Act 1994*.

Division 2 Amendments commencing on assent

Clause 4 Amendment of s 811 (Proceedings for particular offences relating to particular instruments)

Clause 4 amends existing section 811 of the *Environmental Protection Act 1994* to clarify that offence provisions in former chapter 7, parts 5 to 5B (environmental protection orders, directions notices and clean-up notices) continue to apply as if the *Environmental Protection (Powers and Penalties) and Other Legislation Amendment Act 2024* had not commenced. In effect, this amendment ensures that the administering authority can take the necessary actions – including the issuing of an infringement notice – as originally intended in response to non-compliance with an existing notice or order, thereby ensuring that the community and the environment are protected.

Division 3 Amendments commencing 28 days after assent

Clause 5 Insertion of new ch 5, pt 5, div 2, sdiv 1A

Clause 5 inserts a new section 169A into the *Environmental Protection Act 1994* which relates to the automatic approval of standard applications for an environmental authority (other than an application for a mining activity relating to a mining lease).

Essentially, the existing section 170 has been replaced to restructure the way in which standard applications for an environmental authority are issued. The existing section 170 has been split into two new sections:

1. The new section 169A deals with standard applications for an environmental authority (other than an application relating to a mining lease); and
2. The new section 170 (see below) deals with standard applications for an environmental authority which relate to a mining lease.

Note: the term *standard application* is defined in section 122 of the *Environmental Protection Act 1994*. It is effectively an application where all of the proposed activities meet the eligibility criteria, and the proponent specifies that they can meet the standard conditions. Both the eligibility criteria and the standard conditions are stated in an environmental relevant activity (ERA) standard for the activity which is published on the department's website.

Section 169A Approval of standard application generally

The new section 169A of the *Environmental Protection Act 1994* relates to the majority of standard applications – that is, all standard applications other than those which relate to a mining lease. Under the existing section 170, a standard application for an environmental authority (other than an application relating to a mining lease) must be approved by the administering authority with the standard conditions. However, as these authorities are automatically granted, the provision has been redrafted to be more specific that that the application is taken to have been approved if the applicant applies for their environmental authority via a standard application (i.e. the applicant states that they meet the eligibility criteria and can comply with the standard conditions).
Note that the applicant must also be a registered suitable operator before the standard application can be considered.

This is because the type of application dealt with by the new section 170 (see below) must be approved by the administering authority (or a delegate) and cannot be automatically approved by an electronic system, while the other types of standard applications were always intended to be automatically granted by an electronic system, since there was no discretion of the administering authority required (i.e. because they *must* be approved).

The automatic grant by the electronic system is taken to be a decision of the chief executive to preserve any administrative review rights (e.g. under the *Judicial Review Act 1991*) that may have previously existed in relation to standard applications for an environmental authority. It is not intended to create any additional administrative review rights.

Clause 6 Replacement of s 170 (Deciding standard application)

Clause 6 replaces section 170 of the *Environmental Protection Act 1994* so that it will only apply to those standard applications for an environmental authority which relate to a mining lease.

Section 170 Deciding standard application for mining activity relating to mining lease

The new section 170 of the *Environmental Protection Act 1994* will apply only to those standard applications for an environmental authority for mining activities which relate to a mining lease. These applications must be decided by the administering authority (or a delegate of the administering authority) because they are required to be publicly notified and third parties can make a submission about the standard conditions. Consequently, the administering authority must approve the application, but can decide to either approve the environmental authority with the standard conditions, or to approve it with different conditions (as a result of a properly made submission which relates to the topic of a standard condition – e.g. a properly made submission about water impacts could lead to the standard conditions which regulate water impacts being changed).

Clause 7 Replacement of s 177 (Automatic decision for standard applications in particular circumstances)

Clause 7 replaces existing section 177 of the *Environmental Protection Act 1994* to provide clarity around 'deemed decisions' and distinguish them from automatic approvals under the new section 169A. The Bill inserts a new subdivision heading to separate the deemed decisions from the automatic approvals or decisions made by the administering authority (or a delegate of the administering authority).

Section 177 Deemed decision for standard application for mining activity relating to mining lease in particular circumstances

The previous section 177 (Automatic decision for standard application in particular circumstances) only dealt with standard applications relating to a mining lease. However, with the restructure of section 170 into new sections 169A and 170, section 177 has required a restructure. New section 177 has been restructured to remove any doubt that the decisions that are taken to be made if the decision period expires (i.e. deemed decisions) are different to those which are automatically granted by an electronic system (i.e. those decisions under the new section 169A in clause 5 above). Other than this restructuring, the effect of the provision remains the same.

Clause 8 Replacement of s 195 (Issuing environmental authority or PRCP schedule)

Clause 8 replaces section 195 of the *Environmental Protection Act 1994* as a consequence of the amendments in clauses 5 and 6 above to insert new sections 169A and 170. With the restructure of the old section 170 into two sections (the new section 169A and the new section 170), section 195 also needed to be restructured. Other than this restructuring, the effect of the provision remains the same.

Clause 9 Replacement of s 204 (Conditions that must be imposed for standard or variation applications)

Clause 9 replaces section 204 of the *Environmental Protection Act 1994* as a consequence of the amendments in clauses 5 and 6 above to insert new sections 169A and 170. With the restructure of the old section 170 into two sections (the new section 169A and the new section 170), section 204 also needed to be restructured to ensure that an environmental authority which is issued under the new section 169A is still subject to the condition about eligibility criteria. The language of the new section 204 was also updated to match other provisions with deemed conditions (e.g. section 206 of the Act). These changes do not alter the intent of the provision, which is to ensure that any environmental authority issued following a standard or variation application is subject to a condition that the holder must continue to meet the eligibility criteria.

Clause 10 Amendment of s 553 (Electronic applications and submissions)

Clause 10 amends section 553 of the *Environmental Protection Act 1994* to remove any doubt that an application or submission may be made both by email and by entering information directly into an electronic system.

Clause 11 Insertion of new s 555

Clause 11 inserts a new section 555 into chapter 12, part 2 of the *Environmental Protection Act 1994* to create a process to approve an electronic system for the automatic approval of low risk authorities.

Section 555 Electronic system for automatically issuing particular environmental authority

This section creates a process for the chief executive to approve an electronic system to automatically grant standard applications for an environmental authority under section 169A (inserted by clause 5 of this Bill). The purpose of this section is to remove any doubt that an electronic system can be used to automatically grant an environmental authority for a standard application (other than for a mining lease). This process matches existing administrative processes, but including a specific provision for the chief executive to approve the system removes any doubt about how the system is approved for this purpose.

Clause 12 Insertion of new ch 13, pt 34

Clause 12 inserts new validation and transitional provisions into the *Environmental Protection Act 1994* as a result of the above amendments.

Part 34 Validation and transitional provisions for Nature Conservation and Other Legislation Amendment Act 2025

Section 824 Validation of environmental authorities purportedly issued for particular standard applications

This section ensures that environmental authorities which were previously issued under section 170 of the Act remain valid as at the date of issue on the environmental authority itself. This is because there is some doubt as to whether the authorities which were automatically granted by the electronic system under section 170 prior to amendment were valid as at the date of issue. This transitional provision ensures that any person who has relied upon their environmental authority as at the date of issue does not have their right to carry out the activity called into question because of the abovementioned uncertainty.

Note: this section only applies to the original issue of the environmental authority which was the subject of a standard approval. Nothing in this section changes any action taken after the initial issue of the authority to amend or cancel the authority.

Section 825 Electronic system approved before commencement

This section ensures that any time delay between the authorisation of the electronic system and the commencement of these provisions after assent remains valid after the commencement of these provisions.

Clause 13 Other amendments

Clause 13 provides that schedule 1 of the Bill also amends the *Environmental Protection Act 1994*.

Part 3 Amendment of the Nature Conservation Act 1992

Clause 14 Act amended

Clause 14 states that Part 3 amends the *Nature Conservation Act 1992*.

Clause 15 Amendment of s 143A (False or misleading documents)

Clause 15 amends the existing section 143A of the *Nature Conservation Act 1992* to reinforce that the offence of giving a document that contains false, misleading or incomplete information applies to a person who gives information in a variety of ways, such as to an electronic system. This includes in the processes of applying for an authority under the *Nature Conservation Act 1992*. If a person provides false or misleading information into an electronic system used for the *Nature Conservation Act 1992*, the person is guilty of an offence.

Clause 16 Replacement of s 143B (Chief executive may approve use of information system)

Clause 16 replaces the previous section 143B of the *Nature Conservation Act 1992*, and inserts a new section 143BA to provide contemporary provisions for the approval and use of an electronic system for automatically dealing with authorities.

Section 143B Authorisation for automatic dealing with particular authorities

The new section 143B provides authorisation for dealing with particular authorities automatically. Specifically, it sets out the requirements and process for identifying and authorising the types of authorities that may be dealt with automatically.

Subsection (1) allows a regulation to prescribe the types of authorities that may be automatically issued, given or granted to a person, as well as those that may be automatically amended, cancelled, or renewed. This section also provides for the prescription by regulation of the way a relevant authority may be automatically dealt with through an electronic system.

Subsection (2) limits the circumstances in which a regulation may prescribe relevant authorities to which automatic systems may be used by requiring the Minister to be satisfied that only those matters that would not have a detrimental impact on achieving the object of the Act are prescribed.

Subsection (3) provides for definitions in the section. These definitions ensure that when a decision for an authority must be decided by the chief executive and the decision is non delegable, an information system cannot process the decision. Non-delegable decisions are listed in section 141 of the *Nature Conservation Act 1992*.

Replacement of the previous section 143B does not remove the ability to use electronic systems for purposes other than automatic issue of relevant authorities, as the use of electronic information systems is provided for under the *Electronic Transactions (Queensland) Act 2001*. It is not intended to change in any way the authorisation or use of other electronic systems used for administering the *Nature Conservation Act 1992*.

Section 143BA Electronic system for automatic dealing with particular authorities

The new section 143BA addresses the approval requirements for automatic electronic systems. Specifically, it establishes a clear process and requirements with regard to the use of an electronic system, including the circumstances for when an electronic system can be used for particular purposes.

Subsection (1) establishes that an electronic system must not be used for automatically dealing with relevant authorities prescribed under a regulation for section 143B unless the chief executive has approved the use of the system for such a purpose.

Subsection (2) requires the chief executive to take all reasonable steps to ensure that the approved electronic system operates, and continues to operate, in a way the meets the requirements of the of the *Nature Conservation Act 1992*.

Subsection (3) clarifies that a relevant authority that has been dealt with by the approved electronic system is taken to have been dealt with by the chief executive. This will preserve review rights and proceedings.

Subsection (4) states that this approval does not prevent the approved electronic system from being used for another purpose relating to the administration of the *Nature Conservation Act 1992*.

Subsection (5) provides definitions for the section for clarity.

Clause 17 Amendment of s 143G (Internal review)

Clause 17 amends section 143G of the *Nature Conservation Act 1992* to establish that an original decision for a relevant authority dealt with by an approved electronic system under section 143BA, may only be dealt with by an authorised person for the purposes of internal review proceedings. Subsection (3)(b) preserves existing internal review arrangements for original decisions made by an authorised person.

Clause 18 Insertion of new pt 12, div 9

Clause 18 inserts a new Division 9 into Part 12 of the of the *Nature Conservation Act 1992*.

Division 9 Validation and transitional provisions for Nature Conservation and Other Legislation Amendment Act 2025

The purpose of this new division is to provide for validation and transitional provisions for the Bill.

Section 220 Validation of regulation authorities

This section validates all authorities that were issued by an automated system prior to the commencement of this amendment Act. This section ensures that where a relevant authority was issued by an automated system prior to this amendment Act, it is taken to be valid and lawful.

This section clarifies that all authorities that were issued, given, granted, amended or renewed by an automated system prior to the commencement of this amendment Act are taken to be valid and lawful and can be considered to have always been valid and lawful from the date of the original granting. Important definitions are defined for the section. The primary intent of the validation is to ensure that authorities automatically granted prior to commencement are valid irrespective of whether the granting was done using an approved electronic system and irrespective of the scope of matters considered by the operation of the system at the time of issue.

To be clear, this validation provision applies to previously automatically granted authorities, even if that authority type can no longer be dealt with automatically or may have since stopped being dealt with automatically. This validation provision does not cover any activity that would always have been unlawful, even if the authority had been decided by the chief executive.

Section 221 Electronic system approved before commencement

This section ensures that a chief executive approved use of an electronic system for an automated purpose in effect immediately before commencement of section 143BA of the amendment Act is taken to be approved under section 143BA for the same purpose. This ongoing approval only ceases when a new approval is given under section 143BA(1) or the chief executive otherwise ends the approval.

Schedule 1 Other amendments of Environmental Protection Act 1994

Schedule 1 makes minor and technical amendments to the *Environmental Protection Act 1994* that commence 28 days after assent. These minor amendments:

- replace ‘automatic’ with ‘deemed’ for deemed decisions to distinguish them from decisions automatically approved by an electronic system under the new section 555;
- amend headings as a result of new subdivisions;
- ensure that references to decisions made also includes decisions which are taken to be made;
- amend the definition of ‘registered suitable operator to refer to the part which houses these provisions rather than an individual subsection; and
- and update cross-referencing due to the amendments.

These changes are primarily a consequence of the amendments inserted by clauses 5 and 6 of this Bill.